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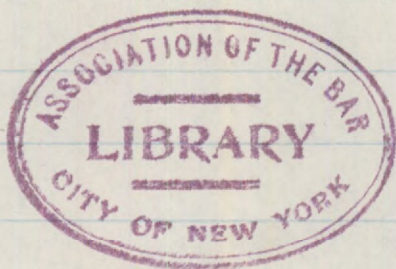
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*Supreme Court  
Appellate Division*

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*First Rept  
Vol 3758*

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# SUPREME COURT

Appellate Division---First Department.

SUNDEL SALAND,

371  
*Plaintiff-Respondent,*

*against*

HEBREW PUBLISHING COMPANY,

*Defendant-Appellant.*

---

## CASE ON APPEAL.

---

MILLER & STEIN,

*Attorneys for Defendant-Appellant,*

802 Broadway,

Brooklyn, N. Y.

HERMAN S. FRIED,

*Attorney for Plaintiff-Respondent,*

299 Broadway,

New York City.

THE REPORTER CO., WALTON, N. Y.

New York Office: 253 Broadway, Room 817. Phone 6575 Barclay.  
Brooklyn Office: 375 Fulton Street, Room 58. Phone 2300 Main.

1917





## Index.

	Page
Statement Under Rule 41 .....	1
Notice of Appeal .....	2
Summons .....	3
Complaint .....	4
Answer .....	10
Amended Answer .....	12
Order Redirecting Verdict .....	16
Stipulation Consenting to Accept Verdict as Reduced .....	17
Extract From Clerk's Minutes .....	18
Judgment .....	19
Case .....	21
Motions to Dismiss the Complaint ( fols. 63, 92, 948, 1171) .....	21, 31, 316, 391
Charge .....	391
Motion to Set Aside Verdict (fol. 1218) ...	406
Statement that Case Contains all the Evidence	406
Opinion .....	407
Order Settling and Filing Case .....	427
Stipulation Waiving Certification .....	428
Clerk's Certificate .....	428

## TESTIMONY.

### WITNESSES FOR PLAINTIFF:

Philip Tweresky :	
Direct .....	32
Irving Gruber :	
Direct .....	35

	Page
Isaac Brill:	
Direct .....	36
Cross .....	37
Re-direct .....	51
Sundel Saland:	
Direct .....	51
Cross .....	83
Recalled:	
Cross .....	144
Re-direct .....	172
Recalled:	
Re-direct .....	198
Re-cross .....	205
Bernard Drochman:	
Direct .....	132
Cross .....	137
Phillip Klien:	
Direct .....	142
Cross .....	142
Re-direct .....	143
Gabriel W. Margolies:	
Direct .....	172
Cross .....	175
Samuel Buchler:	
Direct .....	184
Cross .....	188
Recalled:	
Direct .....	279
Cross .....	279
Archie Goldman:	
Direct .....	193
Aaron S. Bock:	
Direct .....	235
Cross .....	239
Re-direct .....	247
Re-cross .....	247



	Page
Louis Cutler :	
Direct .....	248
Cross .....	252
Re-direct .....	265
George F. Adair :	
Direct .....	266
Hyman Levene :	
Direct .....	267
Cross .....	268
Julius Saland :	
Direct .....	272
Melek Sotz :	
Direct .....	274
Cross .....	277
Recalled :	
Direct .....	390
Christos Goussios :	
Direct .....	294
Aaron Saland :	
Direct .....	295
Cross .....	297
Recalled :	
Direct .....	388
Cross .....	389
Elias Scleim :	
Direct .....	309
Recalled :	
Direct .....	311
David Werbelowsky :	
Direct .....	310

#### WITNESSES FOR DEFENDANTS

Benjamin Waxelbaum :	
Direct .....	230
Cross .....	232
Re-direct .....	234

	Page
Alexander Harkaby:	
Direct .....	318
Cross .....	330
David Werbelowsky:	
Direct .....	337
Cross .....	355
Re-direct .....	378
Barnet Dogan:	
Direct .....	382
Abraham Cohen:	
Direct .....	383
Cross .....	386

## EXHIBITS:

## PLAINTIFF'S EXHIBITS:

	Admitted folio	Printed page
9. Same as Plaintiff's Exhibit 26 ..	607	414
14. Jewish Morning Journal of Sept. 15, 1915 .....	103	
15. The Wahrheit of Sept. 14, 1915	104	
16. Translation of article from the Wahrheit .....	109	408
17. Telegram of Sept. 15, 1915, Rabbi S. Rappaport to plaintiff .....	232	410
18. Telegram of Sept. 18, 1915, Rabbi H. Hochberg to plaintiff .....	233	411
19. Telegram of Sept. 19, 1915, S. Lubitz to plaintiff .....	234	411
20. Telegram of Sept. 20, 1915, Rabbi Rosenberg to plaintiff .....	235	412
21. Check for \$80 Hebrew Publishing Co. to order of plaintiff .....	244	412
23. Receipt, dated Sept. 28, 1915, is- sued by Artic Freezing Co. to plaintiff .....	580	413
24. Copy of sign on Hebrew Publish- ing Co.'s wagon .....	677	

V.

	Admitted folio	Printed page
25. Letter from Rabbi Rappaport to plaintiff .....	688	
26. Translation of article from Jewish Daily News of Sept. 8, 1915	743	414
27. Letter from Rabbi Rappaport to plaintiff .....	837	416

DEFENDANT'S EXHIBITS:

B. Plaintiff's advertisement in Jewish issues dated Sept. 24, 1915 ....	284	
B, Part 2. Alexander Harkaby's trans- lation of Exhibit B .....	983	418
C. Another of Plaintiff's advertise- ments .....	296	
C. Part 2. Translation of the Saland advertisement .....	981	419
C. Part 3. Translation of Goldberg ad- vertisement .....	981	419
D. Translation of a proclamation ...	724	420
E. Plaintiff's bill to the Hebrew Pub- lishing Co. ....	452	422
F. Article in Yiddish of the Wahrheit of Sept. 14, 1915 .....	509	
F, Part 2. Alexander Harkaby's trans- lation of Exhibit F .....	984	423
H. Article from the Jewish Morning Journal of Sept. 8, 1915 ....	693	
H, Part 2. Alexander Harkaby's translation of Exhibit H .....	978	425
I. Alexander Harkaby's translation of Exhibit 24 .....	990	426
J. Post card sent by David Werbel- owsky to customers .....	1057	
J, Part 2. Translation of Exhibit J	1056	427











# SUPREME COURT

APPELLATE DIVISION—FIRST DEPARTMENT.

<p>SUNDEL SALAND, Plaintiff-Respondent,</p> <p style="text-align: center;">vs.</p> <p>HEBREW PUBLISHING COMPANY, Defendant-Appellant.</p>	}	2
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## Statement Under Rule 41.

This action was commenced on the 22nd day of November, 1915, by the service of a summons and complaint.

The answer was served on the 20th day of December, 1915, and the amended answer on February 1, 1917.

The names of the parties are given in full above.

There has been no change of parties or attorneys 3  
pending the suit.

Herman S. Fried, attorney for plaintiff.

Miler & Stein, attorneys for defendant.

4

**Notice of Appeal.**

SUPREME COURT,

NEW YORK COUNTY.

SUNDEL SALAND,	}
Plaintiff,	
vs.	
HEBREW PUBLISHING COMPANY,	}
Defendant.	

5. Sirs:

You will please take notice, that the defendant appeals to the Appellate Division of this Court for the First Department, from the judgment of this Court, dated the 26th day of March, 1917, and entered in the office of the Clerk of the County of New York on the 26th day of March, 1917, and also appeals to the said Court from the order in this action denying the defendant's motion upon the judge's minutes for a new trial, entered in the office of the Clerk of the County of New York on the 23rd day of March, 1917, and from each and every part of said judgment and order, as aforesaid.

6 Dated, April 19, 1917.

MILLER & STEIN,  
Attorneys for Defendant-Appellant,  
802 Broadway,  
Brooklyn, N. Y.

To:

Herman S. Fried, Esq.,  
Attorney for Plaintiff-Respondent,  
299 Broadway,  
New York City.  
County Clerk of New York County.

**Summons.**

7

SUPREME COURT,

NEW YORK COUNTY.

SUNDEL SALAND,	}
Plaintiff,	
against	
HEBREW PUBLISHING COMPANY,	}
Defendant.	

To the above-named Defendant:

8

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty (20) days after the service of this summons, exclusive of the day of service and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, November 19th, 1915.

HERMAN S. FRIED,  
Attorney for Plaintiff,  
Office & P. O. Address,  
299 Broadway,  
Manhattan,  
New York City.

9



10

**Complaint.**

SUPREME COURT,

NEW YORK COUNTY.

SUNDEL SALAND, Plaintiff, against HEBREW PUBLISHING COMPANY, Defendant.	}	Exhibit "A."
---	---	--------------

11 The plaintiff, complaining of the defendant, by Herman S. Fried, his attorney, alleges:

I. On information and belief, that at all the times hereinafter mentioned, the plaintiff was and still is a citizen of the United States, residing within the City of New York, and has for many years past, been engaged throughout the United States, in the business of importing, buying, selling and dealing in cedars, known in Hebrew, as esrogem.

12 II. On information and belief, that at all the times hereinafter mentioned, the defendant was and still is a domestic corporation organized and existing under the laws of the State of New York, with its main office at the City of New York, and was engaged in the publishing business and was and is also engaged in dealing with cedars.

III. On information and belief, that during the year 1915, and particularly at the time when the libelous articles hereinafter mentioned, were caused to be published, there were only a very few persons, including this plaintiff, dealing with cedars in the United States.

*Complaint*

13

IV. On information and belief, that cedars are used extensively by the Jewish public, with which to celebrate the feast of Succoth, in the synagogues and homes, and that in order to be able to deal successfully with cedars, it was necessary for the plaintiff to have the confidence and respect of the Jewish public, and the plaintiff did for many years past, enjoy the confidence and esteem of the Jewish public, and was regarded by all as a reputable business man of good name, fame and credit, and had acquired and was continually acquiring large gains and profits from his said business.

14

V. On information and belief, that the defendant in order to injure the plaintiff in his good name, fame and reputation and in order to injure him in his aforesaid business, and in repute and estimation of the Jewish public, and to prevent divers persons of Jewish faith from purchasing cedars from the plaintiff, and to deprive him of the gains and profits therefrom, did during the month of September, 1915, falsely, wrongfully and maliciously cause and procure to be published of and concerning the plaintiff, in the Yiddish language in various Jewish newspapers published in the Yiddish language, namely, in the Jewish Morning Journal, The Wahrheit, The Day, a certain false, malicious and defamatory libel, which is hereto annexed and marked "Plaintiff's Exhibit A," and which is made part of this complaint as though fully incorporated herein.

15

VI. That the following is a true and correct translation in English, of the said libellous article as aforementioned, marked "Plaintiff's Exhibit A":

## CEDARS.

## A DUTY TO PUBLISH.

The Hebrew Publishing Company, who since former years, have not omitted a single year to supply their faithful customers with the best Palestine cedars at the cheapest prices, find it necessary to acquaint the Jewish public with the following:

17 We have not this year received any cedars from Palestine, and with the exception of a few American cedar dealers, no one (meaning the plaintiff), received any cedars this year from Palestine.

We need not make any investigation regarding that, because every one knows that from the countries that are at war, no cedars can be procured and just as we could not bring any Hebrew books from Russia and Austria, just so we could not bring any cedars from Palestine. And so were left all the honest cedar dealers in America, this year without cedars. Energy and financial schemes did not help and naturally—when one has no cedar, one does not pronounce any blessing.

18 We would not have found it necessary to make this explanation were it not for the abominable thing perpetrated by a few (meaning the plaintiff) cedar dealers.

Just listen and you will be astonished at what is apt to happen.

As amongst the cedar dealers in America are found a few (meaning the plaintiff) who have every year appealed to the public through announcements in the newspapers that no other cedars should be purchased, except Palestine cedars, because thereby assistance is rendered toward the rebuilding of the Holy Land, and support is given to thousands of colonists who derive a living from planting cedars. Now those cedar

*Complaint*

19

dealers (meaning the plaintiff) have seen that they cannot procure any cedars from Palestine, so they (meaning the plaintiff) travelled over to Korfu, Greece, and bought up a big stock of Korfu cedars.

And just those cedars that come from a land where the ground is saturated with Jewish blood, and which were prohibited by all the sages of Europe, so they (meaning the plaintiff) advertise that they (meaning the plaintiff) have through untiring efforts procured a small number and that it cost them a big price.

Then ask yourself why should these unclean goods cost dear? And why it should require untiring effort to bring to America? They all know apparently, that Korfu cedars are always the cheapest in the market, because not all the cedar dealers would buy them and naturally in America, where there are less buyers, it ought to be and is cheaper and besides the two main markets, such as Russia and Austria are closed; then why should they be so dear. Also the importing should not have been so difficult because Greece is not yet involved in war. 20

The answer is that Korfu cedars cost only a trifle, very little, perhaps ten cents a cedar, and there have been enough brought over, to be used as preserves after the holidays. But it was agreed amongst themselves (referring to the plaintiff) that they (referring to plaintiff) should circulate a report that cedars are scarce and very high priced, in order to blind the public and that it should not inquire what kind of cedars they were, and to skin the public. We find it necessary to announce in order that the public should not be fooled and that it should not permit itself to be skinned, with Korfu cedars which are unfit for blessing. 21

All the cedar dealers from the whole country should give this information to their customers. All Rabbis, Cantors, Shochtim, Sextons, Presidents of

Synagogues, Religious Societies, and all those interested in the religious wants of the people, should acquaint their congregations and forewarn them not to buy any cedars this year, because it is much better not to pronounce a blessing on any cedar than to pronounce a blessing on a Korfu cedar, which grows low to the ground and which is soaked in Jewish blood. It is a much higher duty to give the money to be paid for the cedar to the relief fund for our unfortunate Jewish brethren and sisters in the war countries that trust so strongly to our help.

- 23 It is a much higher duty to give that money to Talmud Torahs and Yeshibeths in Palestine which are in danger of being closed on accounts of the war.

- VII. On information and belief, that the meaning of the aforesaid libelous article and the charges that the defendant sought to make and did make against the plaintiff, are that the plaintiff, in collusion with a small number of other cedar dealers was misleading the Jewish public and inducing them to buy Korfu cedars which are of no value whatsoever, unclean, repulsive to the Jewish instinct and prohibited by the Rabbis, by falsely representing that they were Palestine cedars and that thereby the plaintiff was attempting to cheat and skin the Jewish public.
- 24

VIII. On information and belief, that the said newspapers have a large circulation throughout the United States and reach and are read by a great portion of the Jewish public, who understood and knew that the said libelous articles applied and referred to this plaintiff.

IX. On information and belief, that the facts stated in the said libelous articles were false and untrue and the defendant knew them to be false and untrue at the time he caused same to be published.

*Complaint*

25

X. On information and belief, that by reason of the wrongful acts of the defendant and the libel hereinbefore set forth, the plaintiff has been greatly injured in his good name, fame and reputation and has been brought into disrepute throughout the United States, and that by reason thereof, a large number of plaintiff's customers cancelled their orders and refused to pay for cedars purchased and the plaintiff was left with a large stock of cedars which he was unable to sell and dispose of, all to his damage in the sum of fifty thousand (\$50,000) dollars.

Wherefore, plaintiff demands judgment against the defendant for the sum of fifty thousand (\$50,000) dollars, besides the costs and disbursements of this action.

26

HERMAN S. FRIED,  
Attorney for Plaintiff,  
Office & P. O. Address,  
299 Broadway,  
Manhattan,  
New York City.

City, County and State of New York, ss:

Herman S. Fried, being duly sworn, deposes and says: That he is the attorney for the plaintiff in the within action, and that he is a resident of the County of New York; that he has read the foregoing complaint and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

27

That the source of deponent's information and the grounds of his belief are statements made by the plaintiff herein to deponent, together with certain



28

*Answer*

memoranda and the newspapers now in deponent's possession.

Deponent further states that the reason why this verification is not made by the plaintiff is that the plaintiff is not within the County of New York.

HERMAN S. FRIED.

Sworn to before me this

19th day of November, 1915.

Abraham M. Goodman,

Commissioner of Deeds,

New York City, No. 1166.

29 My commission expires Oct. 19, 1917.

---

**Answer.**

SUPREME COURT,

NEW YORK COUNTY.

30

SUNDEL SALAND,	}	Exhibit "B."
Plaintiff,		
against		
HEBREW PUBLISHING COMPANY,		
Defendant.		

Defendant for answer:

I. Denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraphs numbered I, III and IV of the complaint herein.

II. Denies each and every allegation contained in paragraphs numbered V, VI, VII, VIII, IX and X of said complaint.

*Answer*

31

Wherefore, defendant demands judgment that the complaint herein be dismissed, with costs.

MILLER & STEIN,  
Attorneys for Defendant,  
Office & P. O. Address,  
861 Broadway,  
Brooklyn, N. Y.

State of New York, )  
City of New York, } ss:  
County of New York, )

Jacob Katzeneleubogen, being duly sworn, deposes and says: That he is the vice president of the corporation, the defendant in the within action; that he has read the foregoing answer and knows the contents thereof, that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

32

JACOB KATZENELEUBOGEN.

Sworn to before me this  
20th day of December, 1915.

Louis Hyman,  
Notary Public,  
New York County, No. 283.

33

34

**Amended Answer.**

SUPREME COURT,

NEW YORK COUNTY.

SUNDEL SALAND,	}
Plaintiff,	
vs.	
HEBREW PUBLISHING COMPANY,	}
Defendant.	

35

Defendant for amended answer:

I. Denies that it has any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs numbered I, III, and IV of the complaint herein.

II. Denies each and every allegation contained in paragraphs numbered V, VI, VII, VIII, IX and X of said complaint.

36

III. That for a further and separate defense, and in justification of the statements contained in the article set forth in the complaint, the defendant alleges that the statements contained in the said article concerning said plaintiff were and are true; that it was and is true that the plaintiff did not receive any citrons this year (meaning 1915) from Palestine; that it was and is true that defendant had not received any citrons from Palestine. And so were left all the reliable citron dealers in America that year. Energy and financial efforts did not help and naturally—when one has no citron, one does not pronounce any blessing; that it was and is true that amongst the citron dealers in America are found a few who have every year appealed to the public through announcements in the newspapers that no other citrons should be pur-

chased, except Palestine citrons, because thereby assistance is rendered towards the rebuilding of the Holy Land, and support is given to thousands of colonists who derive a living from planting citrons. Now those citron dealers have seen that they cannot procure any citrons from Palestine, so they travelled over to Korfu, Greece, and bought up a big stock of Korfu citrons. And just those citrons that come from a land where the ground is saturated with Jewish blood, and which were prohibited by all the sages of Europe, so they advertise that they have through untiring efforts procured a small number and that it cost them a big price; that it was, and is, true that Korfu citrons are always the cheapest in the market, because not all the citron dealers would buy them and naturally, where there are less buyers, it ought to be and is cheaper and besides the two main markets, such as Russia and Austria are closed. Also the importing should not have been so difficult because Greece is not yet involved in war; that it was and is true that Korfus citrons cost only a trifle, very little, perhaps ten cents a citron, and there have been enough brought over to be used as preserves after the holidays. But it was agreed amongst themselves that they should circulate a report that citrons are scarce and very high priced, in order to blind the public and that it should not inquire what kind of citrons they were, and to exact a high price from the public. That this announcement was made in order that the public should not be fooled and that it should not permit itself to be skinned with Korfu citrons which are unfit for blessing. All the citron dealers from the whole country should give this information to their customers. All Rabbis, Cantors, Shochtim, Sextons, Presidents of Synagogues, Religious Societies, and all those interested in the religious wants of

38

39

the people, should acquaint their congregations and forewarn them not to buy any citrons this year, because it is much better not to pronounce a blessing on any citron than to pronounce a blessing on Korfu citron, which grows on the ground soaked in Jewish blood. It is a much higher duty to give the money to be paid for the citron to the relief fund for our unfortunate Jewish brethren and sisters in the war countries that trust so strongly to our help. It is a much higher duty to give that money to Talmud Torahs and Yeshibeths in Palestine which are in  
 41 danger of being closed on account of the war.

IV. On information and belief, that the citrons the plaintiff offered for sale, and did sell, at the time mentioned in the alleged libelous article, did not come from Palestine but from Greece, where the ground is saturated with Jewish blood, and which were prohibited by all the sages of Europe.

V. That in mitigation of any damages to which the plaintiff might otherwise appear entitled because of the publication of said alleged libelous matter set forth in said complaint, this defendant repeats and renews all and singular the matters stated under the defense herein and will give evidence thereof, as a  
 42 partial defense in mitigation of damages, as well as in justification.

Wherefore, defendant demands judgment that the complaint herein be dismissed, with costs.

MILLER & STEIN,  
 Attorneys for Defendant,  
 Office & P. O. Address,  
 802 Broadway,  
 Brooklyn, N. Y.

*Amended Answer*

43

State of New York,  
 City of New York, } ss:  
 County of New York, }

David Werbelowsky, being duly sworn, deposes and says: That he is secretary of defendant in the within action; that he has read the foregoing amended answer and knows the contents thereof, that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

DAVID WERBELOWSKY.

44

Sworn to before me this

1st day of February, 1917.

Jacob L. Markel,

Notary Public,

Bronx County, No. 5.

Certificate filed in New York County.

45



46

**Order Redirecting Verdict.**

At a Trial Term of the Supreme Court, held  
at Part VI thereof, in the County Court  
House, New York County, on the 23rd  
day of March, 1917.

Present: Hon. Irving Lehman, Justice.

	SUNDEL SALAND,	}
	Plaintiff,	
	vs.	
47	HEBREW PUBLISHING COMPANY,	}
	Defendant.	

This action having come on to be tried before this  
Court and a jury, and having been tried and a verdict  
having been rendered in favor of the plaintiff in the  
sum of \$10,000, and a motion having been made by  
the defendant at the same term upon the minutes of  
the Trial Judge, to set the verdict aside and grant  
a new trial upon the exceptions taken, because the  
verdict was contrary to and against the weight of  
evidence, because the verdict was contrary to law,  
because the verdict was excessive; and upon all other  
48 grounds set forth in Section 999 of the Code of Civil  
Procedure; and said motion having been entertained,  
and after hearing counsel for the respective parties,  
it is

Ordered, that said verdict for \$10,000, being ex-  
cessive, be and the same hereby is set aside unless the  
plaintiff will stipulate to reduce it to \$6,000, and the  
motion is otherwise denied and it is further

Ordered, that defendant have a stay of thirty days  
and sixty days to make a case.

Enter,

I. L.,  
J. S. C.

**Stipulation Consenting to Accept Verdict as Reduced.** 49

SUPREME COURT,

NEW YORK COUNTY.

<p>SUNDEL SALAND, Plaintiff, against HEBREW PUBLISHING COMPANY, Defendant.</p>	}
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50

Whereas the issues in the above-entitled action were regularly tried before Mr. Justice Lehman, and a jury, on the 26th, 27th and 28th days of February, 1917, and on the 1st and 2nd days of March, 1917, at Trial Term, Part VI, of the above-named court and the jury having brought in a verdict in favor of the plaintiff and against the defendant in the sum of ten thousand (\$10,000) dollars, and

Whereas, the defendant moved to set aside the verdict on the ground that the same is contrary to law and against the weight of evidence, and is prejudicial and excessive and upon all the grounds set forth in Section 999 of the Code of Civil Procedure, 51 and

Whereas, the Justice rendered a decision denying said motion, providing the plaintiff stipulate to reduce said verdict of the jury to the sum of six thousand (\$6,000) dollars, otherwise the motion is to be granted, upon which decision an order of the Court was duly filed and entered on the 23d day of March, 1917.

Now, therefore, the plaintiff herein, hereby stipulated and consents to reduce the said verdict of the jury rendered in this action on the 2nd day of March,

52

*Extract From Clerk's Minutes*

1917, to the sum of six thousand (\$6,000) dollars,  
and that judgment thereon be entered accordingly.

Dated, New York, March 24th, 1917.

HERMAN S. FRIED,  
Attorney for Plaintiff.

---

**Extract from Clerk's Minutes.**

SUPREME COURT,

53

TRIAL TERM—PART VI.

---

SUNDEL SALAND	}
against	
HEBREW PUBLISHING COMPANY.	

---

March 24th, 1917.

54

I hereby certify that this cause was tried before Hon. Irving Lehman and a jury, on the 26, 27, 28 days of February and 1st and 2nd days of March, 1917, and a verdict rendered therein for the plaintiff for the sum of \$10,000. Decision reserved as to the amount. March 20th, 1917. In my opinion the verdict for \$10,000 is under the circumstances excessive and should be set aside unless the plaintiff will stipulate to reduce it to \$6,000. That amount in my opinion as large as a reasonable man acting without passion could have found. Motion to set aside the verdict and for a new trial denied. Thirty days' stay of execution after notice of entry of judgment. Sixty days to make a case.

WM. F. SCHNEIDER,  
Clerk.

**Judgment.**

55

SUPREME COURT,

NEW YORK COUNTY.

SUNDEL SALAND,	}
Plaintiff,	
against	}
HEBREW PUBLISHING COMPANY,	
Inc.,	
Defendant.	

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The above-entitled action having been regularly reached for trial at Trial Term, Part VI, before Hon. Irving Lehman, and a jury, on the 26th, 27th and 28th days of February, 1917, and on the 1st and 2nd days of March, 1917, and the defendant having appeared by counsel and both sides having submitted their proofs and the jury having rendered a verdict therein for the plaintiff in the sum of ten thousand (\$10,000) dollars, and the defendant having thereupon moved to set aside the verdict and for a new trial on the ground that the same is against the weight of evidence and contrary to law, and is prejudicial and excessive and upon all the grounds stated in Section 999 of the Code of Civil Procedure and the Court having denied the motion in all respects, with the provision that the plaintiff stipulate to reduce the verdict of the jury to the sum of six thousand (\$6,000) dollars, and the plaintiff having by stipulation duly filed pursuant to an order duly entered herein dated the 23rd day of March, 1917, consented to reduce the said verdict, it is on motion of Herman S. Fried, attorney for the plaintiff

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Adjudged that the plaintiff have judgment against the defendant for the sum of six thousand (\$6,000)

58

*Judgment*

dollars, the amount of the verdict as reduced by the Court, with interest therein amounting to the sum of twenty-four dollars, from the date of the rendering of the verdict, the 2nd day of March, 1917, and two hundred thirty-two and 06/100 dollars, costs, amounting to six thousand two hundred fifty-six 06/100 dollars, and that the plaintiff have execution therefor.

Judgment signed and entered this 26th day of March, 1917.

WM. F. SCHNEIDER,  
Clerk.

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in this article. No reader reading this article can tell. It used general terms and it requires the reader to put extrinsic facts to connect him with the person referred to in the article.

The Court: Where do you connect the plaintiff with this article at all? How could anybody reading this article apply it to the plaintiff under the allegations here set forth.

Mr. Fried: Section 535 permits us to plead of and concerning the plaintiff.

65 The Court: What is the actual libel which you allege here, what is your innuendo?

Mr. Fried: Our innuendo is that the defendant accuses us of being skins and being dishonest.

The Court: That is not sufficient. Your innuendo states that what you were really charged with was misleading the Jewish public and inducing them to buy Korfu citrons. Where is there any innuendo that you represented they were Palestine citrons or cedars? The article plainly shows by fair construction that they claimed you were selling Korfu citrons, and you claimed you were selling Korfu citrons. There is nothing in the article that does not say that merely that you represented that citrons were so hard  
66 to obtain at the present time so as to keep people from inquiring whether they were Korfu citrons or Palestine citrons and that is not a libelous statement. There is no misrepresentation about that statement.

Mr. Fried: They say that none of the honest dealers have obtained citron from Palestine.

The Court: You don't claim that you did?

Mr. Fried: They claim that we tried to skin and cheat the Jewish public which we can show by absolute intrinsic facts.

The Court: Do you claim you had Palestine citrons?

Mr. Fried: No, we do not.



The Court: Then they did not libel your goods.

Mr. Fried: They attack us for selling Korfu citrons which are absolutely worthless and we are trying to skin the public, whereas as a matter of fact, we did not have one Korfu citron in the house.

The Court: The innuendo is that you are misleading the Jewish public in inducing them to buy Korfu cedars by falsely representing that they were Palestine cedars.

Mr. Miller: I move to dismiss the complaint on the ground it does not set forth a cause of action.

The Court: I will grant the motion. The only charge in this article is that they agreed among themselves to circulate a report which I will take to be untrue, that citrons are scarce and very high priced in order to blind the public and to skin the public. That is a mere conclusion, not following and in itself creating a libel *per se*. Complaint dismissed. 68

Mr. Fried: Your Honor holds—

The Court: That your innuendo is not supported by the article.

Mr. Fried: From the reading of the whole article it shows that the public all thought we were trying to mislead them by selling Palestine citrons. I ask to withdraw a juror for the purpose of amending the complaint. 69

The Court: Motion denied. Did Judge Donnelly deny the motion?

Mr. Fried: Yes.

Mr. Miller: I move to dismiss the complaint.

The Court: Motion denied.

Mr. Miller: Exception.

Mr. Fried opens to the jury.

Mr. Miller: I ask to have the plaintiff's opening taken on the record.

Mr. Fried: Gentlemen of the Jury, the market in Triest was closed and on account of the large use of those citrons in Russia, and Austria being at war with Russia, the market was closed and the dealers had to go to Greece directly.

The plaintiff went over to Greece in the summer of 1915, he and one more man, and there purchased his stock of citrons from Kamura and Parga, two farms where those citrons are produced, and brought back a stock of about 15,000.

71 When the plaintiff came back here, he came in to see the Hebrew Publishing Company, or Mr. Werbelowsky, its secretary or treasurer. That was during the early part of September, 1915, and then he asked him how many citrons he was going to use this year and he told him, I think, something like 1,000 or 1,500 of those citrons, and they began speaking as to the price of those citrons and the plaintiff then told him that there had been considerable trouble this year in obtaining them because the Jewish dealers from Russia, from Galicia, from Germany and from all over the world, had gathered in Piraeus and Athens, and the price of citrons had gone up considerably and he told him the price at which he would sell them.

72 Mr. Miller: I do not think that these facts are within the issue. Nothing is alleged of a contract as to these citrons and it has nothing to do with malice.

The Court: Objection overruled.

Mr. Miller: Exception.

Mr. Fried: Gentlemen, Mr. Werbelowsky made a proposition to Mr. Saland how much have you got. He said, "I brought over a stock of 15,000 and another dealer had brought over about 5,000." He said "Usually the market is 40,000, and we have just about half." And Mr. Werbelowsky said, "Well, I

will tell you what I will do, I am not going to pay that price but I will go in partnership with you, I will take over and finance the thing and go in on the deal with you."

Mr. Saland told him the thing had already been financed, he had already obtained money sufficient to finance him and he could not entertain any such proposition.

Then he made another proposition to Mr. Saland as you will hear more particularly from the testimony, that he should sell him at cost price, with a small commission which Mr. Saland refused to accept and told him he was entitled to a fair profit and that because he was a better customer than the usual private dealer he was ready to give him those citrons at a cheaper price than anybody else, but not on the terms he demanded. He said, "Well, I went to Greece and I imported them and I advanced the money. I am not going to give it to you at that price." 74

He said, "If you are not going to give it to us at cost price or a small commission then we will not sell any citrons, but remember you will not sell any citrons either."

He then told him "unless that is done I am going to open up an advertising campaign and put you out of business," and that was in the early part of September, 1915. 75

Then followed this article:

"A Duty to Publish.

"The Hebrew Publishing Company, who since former years, have not omitted a single year to supply their numerous customers with the best Palestine citrons at the cheapest prices, find it necessary to acquaint the Jewish public with the following:

"We have not this year received any citrons from Palestine, and with the exception of a few American citron dealers, no one (meaning the plaintiff) received any citrons this year from Palestine.

"We need not make any explanation regarding that, because every one knows that from the countries that are at war, no citrons can be procured and just as we could not bring any Hebrew books from Russia and Austria, just so we could not bring any citrons from Palestine. And so were left all the reliable citron dealers in America, this year without citrons.

77 Energy and financial efforts did not help and naturally when one has no citron, one does not pronounce any blessing.

"We would not have found it necessary to make this explanation were it not for the abominable thing perpetrated by a few (meaning the plaintiff) citron dealers.

"Just listen and you will be astonished at what is apt to happen.

"As amongst the citron dealers in America are found a few (meaning the plaintiff) who have every year appealed to the public through announcements in the newspapers that no other citrons should be purchased, except Palestine citrons, because thereby assistance is rendered toward the rebuilding of the Holy Land, and support is given to thousands of colonists in Palestine who derive a living from planting citrons.

78 Now, those citron dealers (meaning the plaintiff) have seen that they cannot procure any citrons from Palestine so they (meaning the plaintiff) travelled over to Korfu, Greece, and bought up a big stock of Korfu citrons.

"And just those citrons that come from a land where the ground is saturated with Jewish blood, and which were prohibited by all the eminent Rabbis of Europe, so they (meaning the plaintiff) advertise that

they (meaning the plaintiff) have through great pains procured only a small number and that it cost them a big price.

"Then ask yourself why should these forbidden goods cost dear? And why it should require great pain to bring to America? It seems they all know that Korfu citrons are always the cheapest in the market, because not all the citron dealers buy them and naturally an article that has few buyers ought to be and must be cheaper and besides the two main markets, such as Russia and Austria are closed: then why should they be so dear? Also the importing should not have been so difficult because Greece is not yet involved in war. 80

"The answer is that Korfu citrons cost only a trifle, very little, perhaps ten cents a citron, and there have been enough brought over, to suffice for making as preserves after the holidays. But it was agreed amongst themselves (referring to the plaintiff) that they (referring to plaintiff) should circulate a report that citrons are scarce and very high priced, in order to blind the public and that it should not inquire what kind of citrons they were, and to exact a high price from it. We find it necessary to announce in order that the public should not be a dummy and that it should not permit itself to be flayed with Korfu citrons which are unfit for blessing. 81

"All the citron dealers from the country should give this information to their customers. All Rabbis, Cantors, Shochtim, Sextons, Presidents of Synagogues, Religious Societies, and all those interested in the religious wants of the people, should acquaint their congregations and call upon them not to buy any citrons this year, because it is much better not to pronounce a blessing on any citron than to pronounce a blessing on a Korfu citron, which grows upon ground

soaked in Jewish blood. It is a much higher duty to give the money to be paid for the citron to the relief fund for our unfortunate Jewish brethren and sisters in the war countries who are so much in need of our help.

"It is a much higher duty to give that money to Talmud Torahs and Yeshibeths in Palestine which are in danger of being closed on account of the war."

This is signed by the Hebrew Publishing Company, but with the name left out of it, which we expect to prove refers to the plaintiff, and could not refer to any  
 83 one else; because it was only this plaintiff and another man by the name of Cutler that had imported any citrons during 1915. They were the only two men who had gone there.

Now, gentlemen, we expect to show you that this whole article is made practically out of whole cloth, that the facts that are stated here are absolutely false and untrue and whatever facts there are, are so distorted as to make the whole article simply a malicious attack on the plaintiff, without the slightest justification.

They plead the truth of their charges which they will have to prove. We will show you that the plaintiff has been dealing in citrons for twenty-five years,  
 84 that during all that time in every part of Europe and America the Jewish people of all kinds of beliefs have used the citrons both from Greece, and from Palestine; that there was never any prohibition against the citrons that were brought over; that there had been trouble in Korfu, there had been some anti-Jewish demonstration and one of the European Rabbis did utter a prohibition against the Korfu citrons, but that the Rabbis of this country and everywhere in Europe have been dealing, and as a matter of fact have been trafficking in citrons from the identical place from which we brought them, that is from Piraeus and from

Parga, from Prevesa and Rapesa, I believe the other places.

There has never been any prohibition against those citrons and it has been used by every one without any question, and as a matter of fact were it not for sentimental reasons that some prefer Palestine citrons, we will show you that these citrons are of the very best, and the most orthodox Jews have not hesitated to make blessings on those citrons that come direct from Greece, and we will show you that Korfu citrons you could not get if you paid \$100 and the man went around with a merchant from Russia and he was unable to get one single citron from that place.

86

We also claim that the whole purport of this article, we will show you by previous publications and by previous advertisements, and by the testimony of witnesses and by the fact that there were only two men in the year 1915 travelling over to Greece from this country, and that they were the only men who had been there, and, secondly, the attack was made upon nobody but this plaintiff, and absolutely included this plaintiff and we will show you that every paragraph here is so distorted that as a matter of fact the price of the Greek citrons, excluding the Korfu citrons, are just as expensive and just as high priced as the citrons from Palestine, in fact more, as other people prefer it on account of the nice product. The attack was made that day, followed by the campaign, simply as a result of the malice and personal dealings. We will show you, through acts of the defendant, where he maliciously carried out the scheme of ruining our business and putting us out of business.

87

For instance, where he says, "Korfu cost a very trifle, only perhaps ten cents a citron, that has never been heard of, ten cents a citron, that was made out of his imagination and the libel which he carried



out, and the plaintiff comes into court and asks the protection of the Court and jury to find out whether when he cannot agree on the price with his rival, whether his rival is permitted to subject him to that attack which practically consisted of a boycott and as part of the malicious intent he has had in publishing this article.

Of course, the other facts we claim, this whole peroration, where he describes about the Palestine citrons and to use only the Palestine citrons, and what they have done in the past and finishes up with one of the paragraphs, "In order that the Jewish people should not inquire where those citrons came from," we claim in our complaint that the purport of the whole article read together from the beginning to the end, shows that he attempted to foist on us the false representations that we were selling Korfu goods and representing them to be Palestine goods.

The facts are that we did not represent that, we came out openly and told every one that this year we did not get any Palestine citrons and could not get any. The fact is we did not pay ten cents but that a citron cost a dollar and a half and the whole set of the palm and the myrtle, and the willow, and all that goes with it cost \$1.60 and he wanted a legitimate profit as a result of his labor. He paid a large price and in no way or no manner has this man done one single act that could be called dishonorable and any men will agree, and it is your duty to take whatever action you deem proper at the end of the case.

They plead justification and I assume in that they will have to make good. They do not plead a complete justification, they say that it came from Greece but the crux of the case is this, that an ordinary, after we will connect the plaintiff with the article, that an ordinary man reading this article would believe that

to be the plaintiff, and would believe the man against whom the attack is directed to be the plaintiff, and that the statement that we were attempting to skin the public is absolutely untrue and we did not get one single Korfu citron, that we bought the citrons that were absolutely permissible and there was never any prohibition against it, we paid a big price and not ten cents, and the plaintiff has conducted an honest, legitimate business, and, furthermore, that the defendant for years, for the past ten or twelve years, has been buying citrons from the plaintiff coming from the same identical territory, and has been paying for them and has also been charging the same price, and after you listen to the evidence we think that you will act favorable to us on this case.

92

Mr. Miller: I now move to dismiss the complaint on the ground that it appears affirmatively that the citrons procured and obtained by the plaintiff came not from Palestine but from some other parts of Greece and the question here only is did they produce citrons that came from Palestine and no other place. The same question came up before Judge Donnelly at the last trial and Judge Donnelly distinctly suggested, after the opening, I make the same motion, that if it should appear that the citrons did not come from Palestine they had no cause of action. He told the lawyer at the time he would have no just cause of action.

93

The Court: Judge Donnelly's ruling was that you were to plead justification.

Mr. Miller: He told counsel at the opening—

Mr. Fried: No, he did not, nothing of the kind.

The Court: Motion denied.

Mr. Miller: Exception.

Mr. Miller opens the defendant's case.

94      *Plaintiff's Witness, Philip Tweresky, Direct*

PHILIP TWERESKY, called as a witness in behalf of the plaintiff being first duly affirmed testifies as follows:

*Direct-examination by Mr. Fried:*

Q. Are you connected with the Jewish Daily News?

A. Yes.

Q. In what capacity? A. Advertising department.

Q. What was the circulation of your paper, was it a Jewish daily? A. Daily.

95      Q. What was the circulation of your paper in the year 1915?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial and the question here is the Wahrheit, that is the only one on which a libel is alleged.

The Court: If the complaint is borne out they published the same article in the three papers.

Mr. Fried: Yes.

The Court: Objection overruled.

Mr. Miller: Exception.

96      Q. What was the circulation of your paper in the year 1915? A. Pretty near 60,000, I could not tell the exact amount.

By the Court:

Q. How much? A. Over 55,000.

Q. Which one is that? A. Jewish Daily News.

The Court: We are not interested in the Daily News.

Mr. Fried: I withdraw it.

Mr. Miller: I move to strike it out.

The Court: Motion granted.

*Plaintiff's Witness, Philip Tweresky, Direct*

97

Q. I ask you to identify these issues of a paper and ask you if these are issues of the Jewish Daily News?

A. Yes.

By the Court:

Q. Issued as of the date on them? A. Yes, sir.

Mr. Fried: I ask to have them marked for identification.

Paper marked Plaintiff's Exhibit for identification 1, Plaintiff's Exhibit for identification 2, Plaintiff's Exhibit for identification 3, Plaintiff's Exhibit for identification 4.

98

By Mr. Fried:

Q. I ask you if these are issues of the Jewish Daily News and published on the dates mentioned, on the dates stated there? A. (Witness examines the papers handed him by counsel.) Yes, sir.

Mr. Fried: I ask to have those marked for identification.

Paper marked Plaintiff's Exhibit 5 for identification, Plaintiff's Exhibit 6 for identification, Plaintiff's Exhibit 7 for identification and Plaintiff's Exhibit 8 for identification.

99

Q. I ask you to look at this issue of the Jewish Daily News. A. (Witness examines the paper handed him by counsel.) Yes, sir.

Mr. Fried: I ask to have this marked for identification.

Paper marked Plaintiff's Exhibit No. 9 for identification.

Q. I show you these copies? A. Yes, sir.

Q. Are those the issues of the Jewish Daily News on the date therein stated? A. (Witness examines the paper handed him by counsel.) Yes, sir.

100 *Plaintiff's Witness, Philip Tweresky, Direct*

Mr. Fried: I ask to have these marked for identification.

Papers marked Plaintiff's Exhibit for identification 10, Plaintiff's Exhibit for identification 11, Plaintiff's Exhibit for identification 12, and Plaintiff's Exhibit for identification 13.

Q. What was the circulation of your paper in 1915?

Mr. Miller: What paper?

101 Mr. Fried: The Jewish Daily News.

Mr. Miller: Object to that as not within the issues.

The Court: Sustained.

Mr. Fried: Exception. That is all. Will you admit that these are the papers?

Mr. Miller: There might be questions arising about some publication we have. If you will admit ours, I will admit yours.

Mr. Fried: Yes, I will.

Mr. Miller: We have advertisements in different papers.

102 Mr. Fried: We will admit the publication of the papers.

I offer in evidence the Jewish Morning Journal of September 15, 1915. Do you concede it is a paper.

Mr. Miller: I concede that. I object to the admission of the article in evidence as the article in question is translated and is set forth fully in the complaint and while I have no objection to any paper or issue of which this one the original appeared, I have objection to other papers because it may be that in the other papers a different sort of article appeared than the one mentioned in the pleadings. Unless

*Plaintiff's Witness, Irving Gruber, Direct*

103

they produce this particular one that is made a part of the complaint, I object.

Mr. Fried: That is the one I am offering.

The Court: Objection overruled. You will have to prove it is the same article.

Mr. Miller: I except.

Received in evidence and marked Plaintiff's Exhibit 14.

Mr. Fried: I offer in evidence the issue of the Wahrheit of Tuesday, September 14, 1915.

Mr. Miller: Is that the one you made a part of the complaint?

104

Mr. Fried: Yes.

Received in evidence and marked Plaintiff's Exhibit 15.

Mr. Fried: Will you concede the same was printed in the day, as in the examination before trial.

Mr. Miller: No, the only one I know is the one attached to the complaint taken from the Wahrheit.

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IRVING GRUBER, called as a witness in behalf of the plaintiff, being first duly affirmed, testifies as follows:

105

*Direct-examination by Mr. Fried:*

Q. Are you employed by the Jewish Day? A. Yes.

Q. In what capacity? A. Charging clerk.

Q. Do you know the circulation of your paper?

A. I am not competent to answer that question. I am not the circulation manager.

Mr. Fried: I offer in evidence a translation of the articles, the same as the complaint.

106 *Plaintiff's Witness, Isaac L. Bril, Direct*

The Court: Is it agreed it is correct?

Mr. Miller: No, we deny it in our answer.

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ISAAC L. BRIL, called as a witness in behalf of the plaintiff, being first duly affirmed, testified as follows:

*Direct-examination by Mr. Fried:*

107 Q. Doctor, what's your business? A. I am editor of the English Department of the Jewish Daily News.

Q. How long have you been employed there? A. Two and one-half years.

Q. Have you translated Yiddish into English? A. Yes.

Q. What do you do there with the Jewish Daily News, what is your occupation there? A. I am editor of the English department and I do all the translations for the office from Yiddish into English.

Q. You have been doing that for two and one-half years? A. In that office, yes.

108 Q. I show you this article on the Wahrheit, Exhibit No. 15, and ask you to look at the article on this page and I will show you this article and ask you whether that is a correct translation? A. Substantially correct, sir.

Mr. Fried: I offer in evidence this translation.

The Court: There are one or two words in there that I do not recognize as English words.

By the Court:

Q. How about cedar? A. When I say that is substantially correct, there are words there, the word

*Plaintiff's Witness, Isaac L. Bril, Cross*

109

esrog is not cedar, it should be a citron, not a cedar. This word is citron, yes. It means a lulof.

Q. In other words it is the same translation as I have in the complaint? A. Yes.

Mr. Fried: I offer that in evidence.

Received in evidence and marked Plaintiff's Exhibit 16.

Q. Are there any corrections? A. There are no others. If I had translated it I might have made it—the meaning would not have been changed, I might have used, I might have used different words, but the meaning would not be changed. 110

Q. It is a correct translation? A. It is a correct translation, yes.

Q. You don't like the elegance of the English of the language? A. I don't like the language at all.

By Mr. Fried:

Q. I ask you to look at Exhibit 14 and say if that is the identical article that is contained in the Wahrheit in Exhibit 15? (No response from the witness.)

The Court: I wish counsel would look over the three articles at noon and tell me whether they are the same. 111

Mr. Fried: That is all then for now.

*CROSS-EXAMINATION by Mr. Miller:*

Q. Dr. Bril, prior to your employment in the newspaper you have testified to, what did you do? A. I was always a newspaper man. I have been for twenty-five years.

Q. What in particular, a journalist or what? A. A journalist, yes.

Q. You wrote article for Yiddish newspapers? A. I was employed on Yiddish newspapers.



112

*Plaintiff's Witness, Isaac L. Bril, Cross*

Q. Did you ever write any books? A. I translated books from Yiddish into English, yes.

Q. What? A. A number of stories by Stolman and a large number of writers, I can't tell you all the men I translated the books now offhand.

Q. I just asked you what Yiddish books you translated into English? A. A raft of them, in twenty-five years, a whole lot of them.

Q. Did you ever write any dictionary? A. I did not write any dictionary, no.

113 Q. Were you ever called upon to translate correctly Yiddish into English? A. I suppose so, yes.

Q. Do you know, not suppose, but do you know of any such incidents? A. Oh course, I do.

Q. What particular one do you refer to? A. I do all the translations for the Jewish Daily News, from Yiddish into English.

Q. Those are news items? A. No articles, I translate no news items. I translate articles. I used to and did up to recently translate articles in the Jewish Morning Journal.

Q. Your attention was directed to the particular article that you had examined? A. Yes.

114 Q. Your attention was also directed to the translation? A. Yes.

Q. And at the first blush after you got through you said that it was a correct article until the Court called your attention that there seemed to be some difference as to the translation of the word cedar; up to that time did you notice it was not a correct translation? A. Of course, it was not a correct translation.

Q. Your answer to the Court was that the word cedar lulof, are you correct there? A. Yes.

Q. Don't you know a lulof consists of a palm branch, a myrtle and a willow? A. A whole set consists of—

Q. Answer my question in the form I put it? A. I simply refuse to accept your question because you are stating your question incorrectly.

Q. Don't you know that you were incorrect when you told the Court that the word cedar means a lulof, but on the contrary that cedar in English is a mere word, timber, and nothing else, and that lulof as you put it consists of three constituents, one of the palm branch, another is the myrtle and the third is the willow? A. No, you are absolutely wrong.

Q. You still insist cedar means lulof? A. Cedar means lulof; yes, sir.

116

Q. You claim you have translated the cedar into English correctly when you say lulof is a cedar? A. Yes.

Q. Take the Jewish article? A. I want to make a suggestion.

Q. I read you this article from the complaint and you compare it with the Jewish and I will call your attention to some words that are incorrectly translated. (Reading.) "The Hebrew Publishing Company, who since former years have not omitted a single year to supply their faithful customers"—have you such a word there? A. No.

Q. Don't you know that the proper translation of the word you have there is "numerous," instead of "faithful"? A. I said it was substantially correct.

117

Q. So that your translation when you said that the article was correct you were wrong on that? A. I did not translate that.

By the Court:

Q. You said that was substantially correct, that it was merely a difference of inelegancy of language? A. Yes, and different words may be wrong which I did not translate.

118 *Plaintiff's Witness, Isaac L. Bril, Cross*

Q. We are taking that as a correct translation because you have testified it is? A. Yes, sir.

By Mr. Miller:

Q. You were examined on that? A. There may be a word here and there.

Q. You were mistaken on that particular one that I have referred to, you were not correctly translating it? A. I did not translate it.

Q. Didn't the Court ask you at the conclusion, was this a correct translation as it appears there and you said yes? A. If you mean by correct—

119

By the Court:

Q. You gave that answer? A. Yes, correct as far as the meaning of the article in English, as to Yiddish, is concerned, yes.

By Mr. Miller:

Q. In your opinion as an expert was there any difference in the shades of the words "faithful" and "numerous"? A. Of course, there is a difference.

Q. You could not be mistaken on such a word as that? A. Of course not.

Q. Then you were incorrect when you translated the word "numerous"? A. I was not incorrect. I did not translate it.

120

By the Court:

Q. You testified that was a correct translation? A. Correct and I wanted to say it was a correct translation as far as the meaning of the article and this is concerned, but with regard to—

The Court: The words "numerous" and "faithful" have different meanings?

The Witness: Yes, but it means the same thing.

*Plaintiff's Witness, Isaac L. Bril, Cross*

121

Q. Would you mind going over that and testifying whether it is a correct translation. It will be for the Court or the jury to decide what the meaning of that article is? A. It is not a correct translation.

Mr. Miller: Then I ask it be stricken out.

The Court: Strike it out.

By Mr. Fried:

Q. Doctor, will you translate it? A. Yes, I will translate it.

"Citrons. A duty to publish, to make public.

122

The Hebrew Publishing Company which in years past has been the biggest citron dealer in America and never failed in any year to supply its numerous customers with the best Land of Israel citrons at the cheapest prices, finds it now necessary to make known to the Jewish public the following:

We have received this year no citrons from the Land of Israel and with the exception of the few American citron dealers, no one has received any citrons this year from Palestine. No explanations regarding this need be made because all know—"

By Mr. Miller:

Q. Is it all or every one? A. All and every one is identical.

123

"Because all know that from the countries that are involved in the war nothing can be brought and just as we were unable to bring books from Russia and Austria, we have also been unable to bring citrons from the land of Israel and thus honest citron dealers have been left this year without citrons. No pains, no money means were of avail and as a matter of course when there are no citrons one cannot make the benediction. We would not have found it necessary to make this explanation, if not for the degradation

124 *Plaintiff's Witness, Isaac L. Bril, Cross*

or disgrace something foul, had been committed by a pair of or a few citron dealers. Just listen and be astounded at what may occur. In view of the fact that among the citron dealers in America there are a few that have appealed every year to the public through announcements in the papers, that no other citron except Land of Israel citrons should be bought, because thereby assistance is given to the upbuilding of the Holy Land and support is given to thousands of colonists in the Land of Israel, that make a living by planting citrons. These very citron dealers see that  
 125 they cannot obtain from the Land of Israel any citrons, journey or travel to Korfu in Greece and bought there a big stock of Korfu citrons, and these very citrons which come from a country the soil of which is saturated with Jewish blood and which have been prohibited by all the renowned rabbis of Europe, they advertise that they have after exceedingly great difficulties received only a small number and that it cost them very dear.

Now come the question.

Why should these ritually unclean goods have cost so dear and why have there been such exceedingly great difficulties in bringing them to America? All  
 126 know without any doubt that Korfu citrons are always the cheapest in the market because not all citron dealers will buy them and as a matter of course an article which has a fewer number of purchasers has to be and must be cheap.

Besides that the two main markets for citrons, Russia and Austria are closed. Then why should it have been so very dear, and bringing them over should not have been so very difficult, because Greece has as yet not entered the war.

The truth is that Korfu citrons really cost a trifle, a little, perhaps ten cents a citron, and enough has been

*Plaintiff's Witness, Isaac L. Bril, Cross*

127

brought to suffice for preserving after the Holy day, but an agreement was reached by them that a rumor should be spread that there are only a small number of citrons and that they cost very dear, in order to throw dust in the eyes of the public, so as not to ask what kind of citrons they are, and an extravagant price could be asked for them."

By the Court :

Q. Is that the correct translation of that sentence, the last part of that sentence? A. To ask a very extravagant price. "We have found it necessary to make this so that the public should not be a dummy and should not permit itself to have itself skinned for Korfu citrons over which it is prohibited to make a benediction.

128

All Rabbis, Cantors, Shochtim, Sextons, Presidents of Synagogues and Societies, and all those who are engaged in public work must make this known to their congregations and demand of them not to buy any citrons this year. It is thus preferable not to make any benediction over the citron rather than to make a benediction over a Korfu citron which was grown on the soil and the earth that is saturated with Jewish blood.

129

It is a much more religious duty to give the money which the citron will cost to the Relief Fund for unfortunate and unhappy brothers and sisters in the warring country who need so greatly our assistance. It is also a better religious duty to give the money to the Talmud Torahs, the Hebrew Schools and the Yashibeths, the seminaries of the Land of Israel which are in danger of being closed because of the war.

With respect,  
THE HEBREW PUBLISHING COMPANY."

130

*Plaintiff's Witness, Isaac L. Bril, Cross**CROSS-EXAMINATION by Mr. Miller:*

Q. Try to locate again where you have translated "and so were left all the honest citron dealers in America." A. Yes.

Q. Have you got the word "honest"? Have you the translation of the Yiddish into "honest" correctly? A. Yes, sir, I have.

Q. What was the Yiddish word that you translated "honest"? A. "R'Ele."

131 Q. The word appears in the article. Don't you know that word if you are going to translate it correctly into English would be reliable, "R'Ele" would be reliable and the word "honest" in Yiddish is altogether a different word. What is the word in Yiddish for the word "honest"? A. The same as the German word "Elish."

Q. I am asking you the word "Elish"? A. Yes.

Q. What word do you find? A. The word "R'Ele" can also be translated by the word "honest."

Q. Would not it fit much more there with a translation of reliable for the word "R'Ele," instead of the word "honest"? A. No, sir.

132 Q. Do you translate the word "R'Ele" into English as "honest"? A. Always have done so.

Q. Although you know the Yiddish word is "Elish" and is translated "honest"? A. There is no such word as a real word "Elish" in English.

Q. "Elish" is properly translated "honest"? A. Yes, the word "Elish" would be translated in no other way but "honest."

Q. Why didn't you translate "R'Ele" into "reliable" instead of honest? A. It is immaterial, it can be translated into either.

Q. Do you say it is immaterial whether you had reliable or honest? A. The man who is reliable is honest.

Q. There is no exception to that? A. The man who is reliable is honest.

Q. Is it possible to be reliable and yet have nothing to do with honesty? A. I cannot conceive that.

Q. So that in this particular word you use the word "Elish" although it appears "R'Ele," you put in the translation "honest"? A. Yes.

Q. You do know that the word "R'Ele" is translated "reliable"? A. And also by the word "honest."

By the Court:

Q. At any rate what we are really interested in is this word can be properly translated "reliable"? A. It could be. 134

Q. It would be a correct translation of this particular context to translate that reliable? A. It would be, yes.

By Mr. Miller:

Q. Take the other word in the same paragraph, the plaintiff had it translated—take the third paragraph—you find there a sentence "energy and financial schemes," and do you see those words there in the translation? A. Yes, I see that.

Q. How did you translate the Yiddish part of that sentence? A. No pains, no money but means. 135

Q. Use the Yiddish there, what does it say? A. (The witness reads in Yiddish.)

Q. Take the word "ensringle," don't you know that would be much better translated into English if you said "effort"? A. Pains.

Q. Don't you think it would be a better translation? A. No, not when it is used in the context here.

Q. Don't connect it with the part that follows. A. You have to.

Q. I say the bare word by itself? A. I refuse to answer such a question, you cannot ask that.



136

*Plaintiff's Witness, Isaac L. Bril, Cross*

Q. Read it in conjunction with what follows, would not it be a much better and correct translation if you had said, "energy and financial effort"? A. No, sir.

Q. In place of the word "ensringle" you use what? A. "Pain."

Q. You think "ensringle" correctly translated means "pain"?

The Court: What difference does it make.

Mr. Miller: I only want to show that the doctor is not an authority on correct translations.

137

Q. What is the meaning in Yiddish of the word "pains," translate the word "pains" into English? A. I did not say "pain," I said "pains."

Q. Do you mean that "schmertz" and "ensringle" are alike to you? A. You don't know English. I refuse to answer your question.

Q. What is "pains" in English? A. I would say "ensringle."

Q. You still insist that would be correct? A. Yes. Although you are a supposed authority on English, but you are not.

138

The Court: Strike that out. Confine yourself to answers Dr. Bril.

Q. Take the next paragraph in that Yiddish article and tell us where did you get the translation there of the Yiddish "foul"? A. Disgraceful.

Q. Give us the Yiddish word? A. Nevala.

Q. You say that is a correct translation? A. Yes.

Q. Examine that word again. It is not Nevala, it is Nevola? A. I read it as Nevala.

Q. Do you know the difference between "Nevola" and "Nevala"? A. I refuse to answer that because that is your rendition. I still read it as "Nevala."

By the Court:

Q. You find it is "nevala"? A. Yes.

By Mr. Miller:

Q. You don't care to change your mind? A. No.

Q. If it were "nevala," that is why you translated it "foul"? A. Yes.

Q. If it was the other how would you translate it?  
A. I refuse to answer that question. I will not consider the other at all.

By the Court:

140

Q. Will you kindly state what would be a correct translation for "nevola"? A. I would not, no.

Q. You mean it would not make any sense? A. I could not translate it. I don't know what the word "nevola" is?

Q. You don't know what the word "nevola" is? A. No, and it would not make any sense.

By Mr. Miller:

Q. You don't know of any such word as "nevola"?  
A. No, neither do you.

Mr. Miller: I move to strike that out.

The Court: Motion granted.

141

Q. You never heard of that word "nevola" before?  
A. Never.

Q. If I were to ask you to translate it you would not be able to translate it? A. No, I would not.

Q. You claim to be an expert?

The Court: No, ask him questions.

Q. Take the following paragraph and compare it with the translation given by the plaintiff in order to locate the Yiddish, where it says in that paragraph "Then ask yourselves why should these unclean goods

142

*Plaintiff's Witness, Isaac L. Bril, Cross*

cost dear," and your translation of that was what?

A. Ritually unclean.

Q. What is the Yiddish word that you so translated. A. Trefoh.

Q. Would you say that a proper and correct translation in conjunction with the context there that follows, that the word "forbidden" would fit much better? A. No, I would not. I would still say ritually unclean, because what the meaning of the word here is, is that it is prohibited by the Jewish law or by ban.

143 Q. When you say prohibited, that is synonymous with the word "forbidden"? A. No, not necessarily.

Q. Would you say prohibited would be a better translation than ritually unclean? A. No, I would not.

Q. Does it mean the same substantially, ritually unclean? A. No, a thing may be prohibited and ritually unclean when it has to do with Jewish law or prohibition by the rabbis, a rabbi may say a thing is trefoh, absolutely ritually unclean.

Q. It may be forbidden or prohibited, though not ritually unclean? A. That is the decision of the rabbi.

144 Q. Would not it be a more correct translation if you had used the word "prohibited" or forbidden instead of saying "ritually unclean"? A. No, because it is only used for ritual purposes, this particular thing is used for ritual purposes only.

Q. You insist your translation "ritually unclean" is the correct translation? A. Yes, sir.

Q. In the same paragraph you have used the word "without any doubt," it is translated in the article there, "They all know apparently." Where did you get the word "without any doubt"? A. I would not translate that "apparently."

Q. I know you would not translate it apparently, but would you still translate it "without any doubt"?

As you put it, or will you change it? A. No, I would not change it.

Q. Give us the Yiddish context of it? A. *Dochter*.

Q. What is the translation of the word "*dochter*"?

A. Without any doubt, as it is known. As people think—as people know of it—as people have in mind.

Q. Is not the translation of the word "*perhaps*," would not it be better fitting there? A. No.

Q. You still insist without any doubt is a correct translation of the word in Yiddish "*dochter*"? A. In this case, yes.

Q. Would you do it differently in any other case? 146

A. It all depends on what the context is.

Q. So you change it according to what the context is? A. Certainly you have to do that.

Q. Take the next paragraph, you will notice in the translation the beginning of it, it says "*the answer is*"? A. Yes.

Q. You say the "*excuse*"? A. Yes, the "*terrets*" is "*excuse*."

Q. Is that the meaning of it? A. Yes.

Q. What would you translate it in the absence of anything to connect it? A. As an excuse.

Q. Do not take what follows. I put it to you as an English translator, the word "*terrets*," give the meaning of it? A. "*Excuse*." 147

Q. That is the only one? A. "*Excuse*" yes.

Q. You would not translate the word "*terrets*" in any other as "*answer*"? A. No.

Mr. Fried: I object.

The Court: Objection overruled.

Q. You have got the word "*extravagant*" there in the same paragraph? A. Yes.

Q. You translate that how? A. "*Extravagant*," I think I said.

Q. Give us the full sense of it? A. "Extravagant price, an exorbitant price," I should have said, that would be better.

Q. Would you say it was too exact, or to get a high price? A. No, an "exorbitant price," yes.

Q. Did you find a difference in the shades of "extravagance" and "exorbitant" when the Court asked you definitely whether you were correct on the word "extravagant"? A. "Exorbitant."

Q. You told the Court "Extravagant"? A. "Extravagant."

149 Q. Did you say "extravagant"? A. I said, "very extravagant," "exorbitant."

Q. Now, you want to change it into "exorbitant"? A. It is the same meaning.

Q. You would not agree with the translation that it was merely exacting a high price? A. No.

Q. And the following paragraph, you used the word in conjunction with what preceded "with acquainting their congregations," do you see that there? A. Yes.

Q. And the plaintiff in the translation uses the word "forewarned," you translated that "a demand." A. Yes.

150 Q. Doctor, you are addressed as doctor. What sort of a doctor are you? A. Is that competent to ask?

The Court: Yes.

The Witness: I was the Minister of Congregation.

Q. You were the minister of a congregation? A. Yes, and I am a minister still now.

Q. You are still a minister? A. Yes.

Q. That is why you have assumed the title doctor? A. I have not assumed it. They call me, as you know the custom is.

Q. You are not a doctor? A. I hold no degree of doctor.

*Plaintiff's Witness, Sundel Saland, Direct*

151

*RE-DIRECT EXAMINATION by Mr. Fried:*

Q. You translated the word "raisen a poss." What is the literal translation of those three words? A. "Pulling down, a strip like, a taking off a part of something."

Q. That is the literal meaning? A. Yes.

Q. You translate it as "exacting an exorbitant price." A. Yes.

Q. Would not those three words also fit the word "skin" to tear off a piece, isn't it the meaning of tearing off a piece of skin? A. An exorbitant price would mean that, yes. 152

Recess to 2 o'clock.

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Afternoon session.

SUNDEL SALAND, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

*Direct-examination by Mr. Fried:*

Q. What is your business? A. Importing. 153

Q. Importing what? A. Especially citrons, palms and myrtles.

Q. How long have you been in that business? A. For twenty-four or twenty-five years.

Q. Where? A. Over in Europe and the United States.

Q. How long have you been dealing in citrons in this country? A. About ten or twelve years.

Q. Up to the year 1915, what kind of citrons had you been dealing with? A. Palestine and Greece citrons.

154 *Plaintiff's Witness, Sundel Saland, Direct*

Q. What prices had you been paying for Palestine citrons and for Greece citrons?

Mr. Miller: I object on the ground it is incompetent, irrelevant and immaterial what he paid prior to 1915.

The Court: Objection overruled.

Mr. Miller: Exception.

A. It is all according, mostly the citrons of Greece are more expensive than the Palestine citrons.

155 Q. What prices did they usually range? A. It is different years, if it is enough goods in the market it is cheaper. If it is scarce it is always dearer. Sometimes it costs up to \$2 and sometimes a dollar and a half and sometimes a dollar.

By the Court:

Q. A piece or a dozen? A. A piece.

By Mr. Fried:

Q. In the year 1915 during the summer did you go to Greece? A. I did, yes, sir.

156 Q. When did you go there? A. I went there on the 18th of June, I left New York and I went from there in a Greek steamer, it takes me two weeks to Gibraltar and about twenty-six days until I reach Piraeus.

Q. When you came to Piraeus did you meet any of the farmers there? A. Yes, the farmers were waiting for me.

Q. In Piraeus did you meet any merchants from other countries? A. Not when I arrived there but they came later when I was there already.

Q. From what countries.

Mr. Miller: I object to this.

The Court: Sustained.

Mr. Fried: Exception.

*Plaintiff's Witness, Sundel Saland, Direct*

157

Q. When you came to Greece tell these gentlemen just what you did? A. I came over to Greece and I find the farmers there and I gave them my order for the citrons, what I need specially from Greece.

Mr. Miller: I object to that as being hearsay and incompetent, irrelevant and immaterial, what he did with farmers there.

Objection overruled.

Mr. Miller: Exception.

The Witness: So I gave him the order.

Q. Where did those farmers come from? A. 158  
From Parga and Karmala.

Q. Where were their gardens where they grew these citrons? A. At Parga and Karmala.

Q. What did you do? A. I gave him my order for the citrons what I need usually from Greece and I had my intention to get Palestine citrons.

Mr. Miller: I object to that and move to strike it out.

The Court: Strike out his intention.

Q. What did you do? A. I bought from them the citrons.

Q. How many citrons did you buy? A. I buy 15,- 159  
ooo citrons.

Q. Do you know the name of the person you bought them from? A. Sure.

Q. What was his name? A. One is a man named Hamet.

Q. Where is his place? A. Mahamet.

Q. Where is his place? A. Piraeus.

Q. What is the name of the other man? A. Kitchewacila.

Q. Can you spell that? A. No, I don't know how he is spelling his name.



160 *Plaintiff's Witness, Sundel Saland, Direct*

Q. He is a Greek? A. A Greek. I had a few more farmers there but I don't know their names.

Q. Where did you get your palms from?

Mr. Miller: I object to palms, the only question in issue here is the citrons.

The Court: Objection sustained.

Q. How much did you pay for those citrons? A. Three francs.

Q. How much did you pay altogether for those citrons?

161 Mr. Miller: I object to that as not the proper measure of damage.

The Court: Objection overruled.

Mr. Miller: Exception.

A. Altogether about \$9,500, I could not say exactly the amount.

By the Court:

Q. Delivered here? A. Delivered here, yes, the citrons alone.

By Mr. Fried:

Q. How did you pay it and when did you pay it?

162 A. I paid a certain amount there and \$4,000 I paid there about \$5,450 was C. O. D.

Q. I show you this statement and ask you to tell me where you got this?

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception.

A. I got it from the man I bought the stuff, from the commissioner.

Mr. Fried: I offer this in evidence.

*Plaintiff's Witness, Sundel Saland, Direct*

163

Mr. Miller: Objected to. It would not be any better proof than his own statement.

The Court: Sustained.

Mr. Fried: Exception.

Q. What other expenses did you have? A. I bought palms.

Mr. Miller: I object.

The Court: Sustained.

By the Court:

Q. We want the expenses in regard to the citrons?  
A. I could not buy citrons alone, I bought palms and myrtles also.

164

Mr. Miller: I object.

The Court: Objection sustained.

Mr. Fried: Exception.

By Mr. Fried:

Q. What did the trip to Greece cost you?

Mr. Miller: Objected to.

The Court: Overruled.

Mr. Miller: Exception.

A. One thousand dollars, really, the expense of the ship.

165

Q. What was the expense of the delivery? A. You mean the total expenses what I have?

Q. Yes? A. The total expenses what I have is about \$3,300 for everything.

Mr. Miller: I object and move to strike it out.

The Court: Motion granted.

Q. What was the expense of the delivery of the citron? A. That was including the expense.

166

*Plaintiff's Witness, Sundel Saland, Direct*

Mr. Miller: In the \$9,500 is included the expense.

The Court: Yes.

Q. That includes your trip? A. No.

Q. Did the \$9,000, does that include the expenses of delivering the goods? A. Here to this country?

Q. Yes? A. Yes.

Q. Did you have any other additional expenses? A. Sure, I had.

Q. In connection with the citrons? A. Yes, sure.

167 Q. What was the other expenses? A. The domestic expense you mean.

Q. Yes? A. I had to hire a store, I had to hire people, I had to advertise, I had additional expense of about, I would not say, but about—I have it written down.

Q. Have you a memorandum that will refresh your recollection? A. Yes, I had expense of \$4,354.43.

Mr. Miller: I object to that amount as being a conclusion unless he states each and every item.

The Court: Objection sustained. I will allow it merely as preliminary. You have to prove what expenses he had.

168

Mr. Fried: Afterward the value of the palms can be deducted from the total expense.

The Witness: I have separate palms besides.

Q. Leave that out, leave the palms out. Tell us the items of the expense that you had outside of palms and myrtles. A. \$4,354.43.

Q. What was that? (No response from the witness.)

By the Court:

Q. How is that made up? A. The expense from the book, I could not find out each item separately.

*Plaintiff's Witness, Sundel Saland, Direct*

169

The Court: I will strike it out unless you can analyze it.

Mr. Miller: I move to strike it out.

The Court: Motion granted.

By Mr. Fried:

Q. Haven't you got the different items of the expenses, that you have had? A. Well, it is including all the expense I have. I have the whole book here.

Q. Will the book refresh your recollection? A. Yes.

Q. Here are the books (handing book to the witness). A. I paid for the store \$100. 170

Mr. Miller: I object unless it explains the object and purpose, what is the meaning of the store, does he mean rent or what it is.

The Witness: Rent for the store \$100; expenses \$25 through Mr. Berg.

Q. What is that for? A. It was a commission for a man for work.

Q. For what work? A. Some business affair.

Q. What business affair? A. Commission.

The Court: I will strike that out?

171

By Mr. Fried:

Q. The next item? A. Boxes, \$89. Little boxes to pack the citrons, and then I bought 1,000 citrons here by a Greek, \$850.

By the Court:

Q. That is in addition to the \$15,000 you had paid there? A. Yes.

172 *Plaintiff's Witness, Sundel Saland, Direct*

By Mr. Miller :

Q. Do you mean in this country? A. In this country.

Mr. Miller: I object to that.

The Court: Objection overruled. Why do you object to that.

Mr. Miller: The question here is what citrons he brought over from the other side.

The Court: Objection overruled.

The Witness: I have some small expenses, it is no  
173 use.

By Mr. Fried :

Q. Let us have it? A. 18 cents, 57 cents, I could not figure all that little expense.

Q. Is that the petty expenses in the business? A. Yes.

Q. What does it total up to?

Mr. Miller: I object to the total.

The Court: Sustained.

Q. Give us the figures and give us the small items?

A. Well, I had an express wagon every day, \$3.

174 By the Court :

Q. For what? A. To deliver the orders.

Q. For the actual deliveries? A. Deliveries.

The Court: I will strike it out. That cannot be an expense for which he can collect here, if he actually delivered the citrons.

Q. You mean you delivered the citrons sold? A. Yes, Palestine citrons I paid \$130.15.

Mr. Miller: I object to that.

*Plaintiff's Witness, Sundel Saland, Direct* 175

Q. Where did you buy that? A. Over here.

Q. How do you know they were Palestine? A. They came by mail.

Q. Did you sell those? A. Part of them.

The Court: I will allow it.

Mr. Miller: I except.

Q. How many citrons were those? A. About 150. Advertising, I had about \$900.

Mr. Miller: I object unless he can specify.

The Witness: I can give every bill I paid. 176

Q. Have you got copies of the advertisements here?

A. Yes.

Q. Did they only refer to the citrons? A. Yes, and I have the checks I paid for them.

Q. Produce the copies? A. I had labor about \$1,500.

Mr. Miller: I object.

Q. Labor for what? A. For sorting and packing the citrons.

The Court: Objection overruled.

By Mr. Miller: 177

Q. Did you say \$1,500? A. Yes.

By Mr. Fried:

Q. Read your other expenses? A. Another store \$40.

By the Court:

Q. Do you mean rent? A. Yes. Then I had a store \$30.

Mr. Miller: I would like him to make more clear what store and also the time when.

178 *Plaintiff's Witness, Sundel Saland, Direct*

The Witness: I have the checks here they will prove the months.

Mr. Miller: Then I object to that.

By the Court:

Q. You cannot tell the months? A. Yes.

Q. What month? A. In September.

Q. Where were these stores? A. One was in 29 Canal Street, and one was in 40 Canal Street and I had another store in Mr. Jackson's office, 40 Canal Street, and I had another one in 28 Canal Street which  
179 was either 40 or 38 Canal Street, I am not certain of the number.

By Mr. Fried:

Q. What did you pay on those? A. I paid \$30 and \$35 and \$40.

Q. Did you say you paid one \$40? A. \$40.

Q. Read your further expense? A. \$100 was the original store for wholesale.

Q. What store was that? A. In the Kobre Bank.

Q. Kobre Bank Building on Canal Street? A. Yes.

By Mr. Miller:

180 Q. Is that 41 Canal Street? A. Yes. I paid to Mr. Cutler, I paid him complete, I don't know how to figure it, I paid to him for citrons, I bought from him complete, citrons and myrtles.

By the Court:

Q. You bought them all mixed up? A. I bought them all mixed up.

Mr. Miller: I object to that.

The Court: Objection sustained.

By Mr. Fried:

Q. What other expenses? A. I gave to Mr. Goldberg \$1,800. I made a sum total, \$9,500. That is only \$9,378.84 because I did not have my book.

By the Court:

Q. \$9,378.84? A. Yes.

By Mr. Fried:

Q. Now, the advertising, I show you this paper the Jewish Daily News marked Plaintiff's Exhibit #9, and I ask you whether that was your advertisement in the paper for that day. (Witness examines the paper handed him by counsel.) A. Yes. 182

Q. What did you pay for that?

Mr. Miller: I object.

Q. Does it include anything else in the article except about citrons? A. Yes.

Q. Was that an interview given to one of the papers? A. Yes.

Mr. Fried: I offer this in evidence.

Mr. Miller: I object on the ground the article speaks for itself. I have no objection to what it cost him to advertise it, but I object to the contents of it. 183

The Court: I will allow him to testify what it cost him.

Mr. Fried: I offer this in evidence, for the purpose of connecting the libel with the plaintiff.

The Court: Apparently the attorney seems to concede that it refers to citrons.

Mr. Fried: I offer it in evidence.

The Court: Objection sustained. It could only be admissible for one point and that is conceded.



184 *Plaintiff's Witness, Sundel Saland, Direct*

Q. What did you pay for this advertisement? A. The total advertising I paid is about \$900.

Mr. Miller: I object.

The Court: Sustained.

Q. What did you pay for this? A. There is a bill over there.

Mr. Fried: I withdraw that question for the present.

185 Q. When did you receive those citrons that you purchased in this country? A. On August 26th I came over with the same steamer the citrons were on it, because they were unloaded on the 27th.

Q. After you came here did you go up to the Hebrew Publishing Company? A. Yes.

Q. When, what day was that? A. On the 29th of August.

Q. 1915? A. 1915.

Q. With whom did you go up there? A. Myself.

Q. Where was their office? A. 52 Eldridge Street.

Q. Whom did you meet there? A. I met Mr. Werbelowsky and Mr. Dogan.

186 Q. Is Mr. Werbelowsky the president of the Hebrew Publishing Company? A. I don't know whether he is the president or the secretary.

The Court: Will it be conceded he is?

Mr. Miller: He is the secretary of the defendant corporation.

Q. Did you have a conversation with Mr. Werbelowsky? A. Yes.

Q. Tell the jury what was the conversation? A. He asked me if I had citrons this year, so I told him that I have and I will give you all you need, and he asked me what kind of citrons were they, and I told him, you know, they are brought from Greece. I

*Plaintiff's Witness, Sundel Saland, Direct*

187

told him I have the citrons, they usually need, so they asked me what kind of citrons are they, so I told him I did not have any others but Greece, you know the circumstances this year, and Mr. Dogan made a remark, he says, "Well, it is still better, we do not need Palestine citrons because these citrons are better to sell." So they asked me, "What are the prices for these citrons?" I told him, "I can't give you any prices yet on account, I did not figure it up right yet and I must see first the condition of the palms, how they arrive, if they arrive in good condition, but they will be cheaper, and if they arrive in bad condition, it will cost dearer," so they told me they have to know it because they have inquiries from the country and had to answer their customers, so I promised in about a week's time I will be able to let them know. They said, "What shall we do in the meantime, we have to answer our customers." I told him, "You answer the same way as I do, you write them, you have got the citrons everything complete and the prices will follow in about a week's time." So that was the first conversation and a week later, it was about September 5th, I came up—

188

Q. With whom did you go up the second time?

A. The second time I had my brother with me.

189

Q. What is his first name? A. Aaron, so I came up and I told him that under the circumstances that this year the goods were actually higher prices than normal years on account of the scarcity over there in Greece, the season was earlier than any other season.

Mr. Miller: I object unless he said that to the defendant.

The Witness: I am giving the conversation which I had. So I told him on account it is scarce, the market was a little higher than in normal times and

150

*Plaintiff's Witness, Sundel Saland, Direct*

191

192

then the quality of the goods is a better quality than some other times. I picked up very good ones, and then the palms come in very, very bad condition, and I probably could not use them, and I have to prepare some other palms, buying from California, and, therefore, I am not able to sell my citrons, I mean a complete set for less than \$3 and up. That means \$3 and \$4 for wholesale, but to you people I will give you some privilege, I will sell you for \$3 the best high grade goods. They said, "What, we will never pay you this price, actually, if you want to figure out the lowest cost you can figure then a small commission on it, we will place our order, but if you take us in as partners and give an equal share with you, so we can go hand in hand and make money, then we will go together, but if you do not do it then we will make out an advertisement against you and we will knock you out of the market altogether, you would not be able to sell your stuff this year and we would not be able to do any business, but you may be sure you would not do any business either." I told them, "It is ridiculous they should direct me what I shall do with my stuff, that I bring it over, if you want to buy it, buy it, and if you don't want to buy it don't buy it, but you cannot give me instructions what to do with my stuff." I says, "All right, that is what we can do." He says, "Make another proposition," I said, "What if I give you a guarantee you will make about a thousand dollars' profit in your stuff and if you want to act as agent, I will give you the stuff and you sell it and I will give you fifty cents commission on all you wish to sell." He says, "No, if you want to stick on our proposition we will get an advertisement against you, and knock you out of the market." That is the second conversation I had with him.

Q. Can you sell citrons to the public without any palms and without myrtles? A. No.

*Plaintiff's Witness, Sundel Saland, Direct*

193

Mr. Miller: I object to that as incompetent, irrelevant and immaterial and not within the issues.

The Court: Objection overruled.

Mr. Miller: Exception.

The Court: I don't know what the issue is here because they used the word cedars and I don't know what that means.

Mr. Fried: The cedar is a citron.

The Court: And nothing else?

Mr. Fried: Yes.

The Court: Objection overruled.

194

Mr. Miller: Exception.

Q. You mean citrons? A. Citrons.

Q. When you made him the price, you did not make a price on citron alone, that was on a complete set?

A. Yes.

Q. Including myrtles and palms? A. Including myrtles and palms.

Mr. Miller: I object to that.

The Court: Objection overruled.

Mr. Miller: Exception.

Q. Including the myrtles and palms?

195

Mr. Miller: I object to it as not within the the issues, the myrtles and palms.

The Court: Objection overruled.

Mr. Miller: Exception.

A. Including the myrtles and palms.

Q. Was there anything said, did you tell them just exactly where your citrons came from? A. I told them before they are coming from Greece.

Q. Did you tell them what part of Greece? A. They know the part.

196 *Plaintiff's Witness, Sundel Saland, Direct*

By the Court:

Q. Did you say anything except what you have testified here? A. No; I did not.

By Mr. Fried:

Q. You have been dealing with the Hebrew Publishing Company before, haven't you? A. Yes.

Q. How many years? A. About four or five, I guess.

Q. Prior to 1915 what kind of citrons did they purchase from you? A. From Greece and from Palestine.

197 Q. Greece, what do you mean? A. Parga and Karmala.

Q. Did you at any time have any Korfu citrons? A. No, sir.

Q. During the year 1915 you also had the same citrons that you have been having in the past five or six years? A. Yes, sir.

Q. And that you had been selling to the Hebrew Publishing Company? A. Yes.

Q. Did you afterwards sell some citrons or sets to the Hebrew Publishing Company? A. Yes.

198 Q. When? A. On the 13th. It was on the 5th I had the conversation and on the 13th Mr. Dogan came in and bought thirty sets complete.

Q. What did he pay you? A. \$3.

Q. What citrons were they? A. The citrons I had, I did not have any other citrons.

Q. Where was it they came from? A. From Parga and Karmala.

Q. Did you at any time offer any Korfu citrons for sale during the year 1915? A. I did not have any.

Q. Did you offer them for sale? A. No.

Q. Did you tell anybody you had citrons from Palestine? A. No. I had 150, but I bought from

Palestine, which I offer to these people to buy it, but it was hard to sell them; if anybody come and asked, I told them I have it and I offer it for sale.

Q. Did you sell any of them? A. Part of them.

Q. How many did you sell? A. I don't know exactly, about 75 or 100.

Q. Did you at any time offer anybody any Korfu citrons and tell them that they were Palestine citrons?

A. Never.

Q. As far as you know were there any Korfu citrons in the market at all for sale? A. No, sir.

Q. By any one? A. No.

200

Q. You were how long in Greece? A. About four weeks.

Q. Are you acquainted with all the citron dealers in New York? A. Yes, sir.

Q. When is the time when the merchants from all over the world gather to buy this citron, what months of the year? A. In July and August.

Q. When you were there were there any merchants outside of this country? A. Yes.

Q. Who were they? A. Germans, Austrians and Russians.

Q. Jewish merchants? A. Jewish merchants and the Austrians, they were in Salonika, and we had conversation every day with a gentleman from Frankford, we had a conversation every day by telephone from Salonika.

201

Mr. Miller: I move to strike that out.

The Court: Strike it out, strike it all out.

A. (Continued.) I bought for them and sent them over to Salonika.

The Court: Direct your questions to that subject, Mr. Fried, and then you may get out your proper answer.

202 *Plaintiff's Witness, Sundel Saland, Direct*

The Witness: For the German people, I bought for them and sent them over to Salonika, because they could not coast from Salonika to Piraeus, and they were in Salonika, and I had a conversation every day with them by telephone.

Mr. Miller: I move to strike it out.

The Court: Motion granted.

Q. During that time were there any other merchants, any other American merchants in Greece?

A. Yes; one.

203 Q. Who was that? A. Mr. Cutler.

Q. You are acquainted with every dealer in America? A. Every dealer in the United States.

Q. That deals with citrons? A. Yes.

Q. Were you and Cutler the only ones in 1915 that imported citrons to this country? A. Yes, sir.

Mr. Miller: I object.

By the Court:

Q. You and Mr. Cutler were the only ones out there in Piraeus? A. Yes.

By Mr. Fried:

204 Q. Was there any one else in this country importing citron? A. In this country?

Q. During the year 1915? A. Only one Greek had ten cases.

Q. Outside of him, were there anybody? A. No, sir.

Q. Was that the citron you purchased from the Greek? A. Yes.

Q. Did you purchase a citron from that Greek? A. Yes.

Q. You say that the cost price of these citrons was what?

*Plaintiff's Witness, Sundel Saland, Direct* 205

Mr. Miller: Object to that on the ground it has already been gone over.

The Court: Sustained.

Q. How many citrons are usually used in the United States?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Miller: Exception.

Q. Do you know how many citrons are usually used? A. Yes. 206

By the Court:

Q. Are you speaking of the Tabernacle season?  
A. Yes; about 35,000 to 40,000.

By Mr. Fried:

Q. Usually? A. Usually, in normal times.

Q. How many were there brought in altogether in the year 1915?

Mr. Miller: I object.

The Court: Sustained.

Q. Do you know how many were brought in in the year 1915, in this country? A. Yes. 207

By the Court:

Q. How do you know? A. Because I was the only one.

Q. How do you know you were the only one? A. Because nobody else.

Q. How do you know that? A. Because nobody else.

Q. How do you know that? A. Because nobody else was over there.



208 *Plaintiff's Witness, Sundel Saland, Direct*

Q. How about writing over there? A. I know nobody writes from this country.

The Court: I sustain the objection.

By Mr. Fried:

Q. Did you follow up the advertising? A. Yes.

Q. In the papers, during the year 1915? A. Yes.

Q. Did you interview all the citron dealers in New York? A. Yes.

Mr. Miller: I object.

209 The Court: Overruled.

Mr. Miller: Exception.

Q. Did you communicate with the other citron dealers of the country?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Miller: Exception.

A. Yes.

Q. During the year 1915 were there any citron offered for sale in any paper or advertising or anything else, outside of those that you brought over? A.

210 No.

Mr. Miller: I object.

The Court: Sustained.

Mr. Miller: I move to strike out the answer.

The Court: Motion granted.

Q. Did you see in any advertising or did any of the dealers that you have met offer for sale any citron?

Mr. Miller: I object.

By the Court:

Q. What dealers did you see here? A. All the dealers.

Q. Who are all the dealers? A. All the book stores, all the importers.

Q. Who are they? A. Yarnesky, Freedman, Nettes, Shanker, Cohoes and Barker.

Q. Did you go to all of those places of business? A. Yes.

Q. Did you try to buy any citron from them? A. I said to them all, I tried to sell them to all these people.

212

Q. You sold to them? A. Yes.

Q. Then they did offer for sale after you sold to them? A. I did offer to sell them.

Q. They offer for sale then, after you had sold them? A. Sure.

By Mr. Fried:

Q. Did any of them bring over any citrons from Greece?

Mr. Miller: I object.

The Court: Sustained.

A. No.

213

Mr. Miller: I move to strike out the answer.

The Court: Motion granted.

Q. Did you have any conversations with those people you have just mentioned? A. Yes; I have.

Q. Did they tell you whether they had any citrons or whether there were any citrons in the market to be had?

Mr. Miller: I object to that as hearsay and not binding on the defendant, and as incompetent, irrelevant and immaterial.

214 *Plaintiff's Witness, Sundel Saland, Direct*

The Court: Objection overruled.

Mr. Miller: Exception.

By the Court:

Q. Did you speak to all of these people about the citrons in the market? A. Yes.

By Mr. Fried:

Q. What did they say?

Mr. Miller: Same objection.

The Court: Overruled.

215 Mr. Miller: Exception.

A. They say, the first thing they said, they would gladly buy it but the Hebrew Publishing Company—

Q. I want to find out whether they told you they had any citrons for sale outside of what you offered them, or whether there were any citrons to be obtained in this country outside of what you had?

Mr. Miller: I object.

The Court: Objection sustained.

Q. Were you familiar with the market conditions?

A. Yes.

216 Q. And from various conversations, and did you have conversations and interviews with all the dealers in the city? A. Yes.

Mr. Miller: I object to that as assuming; it does not appear by any proof that he did.

The Court: Objection overruled.

Mr. Miller: Exception.

The Witness: Yes.

Q. Did you ascertain as a result of those interviews, as a result of the information that you gathered in the market, whether there were any other citrons on the market outside of what you had for sale?

*Plaintiff's Witness, Swnel Saland, Direct*

217

Mr. Miller: I object.

The Court: Sustained.

A. There was not.

Mr. Miller: I move to strike out the answer.

The Court: Motion granted.

Mr. Fried: Exception.

Q. Did any of those citron dealers tell you that they had citrons for sale, wholesale, I mean; I do not mean retail? A. No.

218

Mr. Miller: I move to strike it out.

The Court: Motion granted.

By the Court:

Q. You made no attempt to buy any citrons from these people, if they would have any? Did you make the attempt to buy from these people? A. I know they did not have any.

Q. I am asking you whether you made any attempt to buy from these people? A. I tried to sell them.

Q. You did not attempt to buy? A. Of course I did not.

By Mr. Fried:

219

Q. Do you know whether there were any other citron importers outside of yourself and Cutler, during the year 1915?

Mr. Miller: I object.

The Court: Objection sustained.

Mr. Fried: Exception.

Q. From the conversation that you had had with those various dealers did any one of them offer to sell you any citrons wholesale?

Mr. Miller: Object.

220

*Plaintiff's Witness, Sundel Saland, Direct*

The Court: Objection sustained, on the ground he never tried to buy.

Q. Did any of those dealers at the time you interviewed them, tell you whether they had citrons already?

Mr. Miller: I object.

The Court: Objection overruled.

By the Court:

221

Q. Did they ever tell you whether they had citrons or did not have citrons? A. I know they did not.

Mr. Miller: I move to strike out the answer.

The Court: Motion granted.

Q. Did they ever say anything to you in regard to having citrons or not having citrons? A. They had no citrons.

Q. Did they say that? A. They told me they have no citrons.

Q. All of them? A. Yes.

Q. Every dealer in this city told you that he had no citrons? A. Yes.

By Mr. Fried:

222

Q. Did you sell them citrons? A. Yes.

Q. You sold them all the citrons they had, didn't you?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. During the year 1915, did you see any other citrons in the market outside of those that you had?

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception.

A. Only a few Palestine citrons that were with the Mozrochi.

Q. How many citrons did you sell? A. Over 9,000—9,114, I think.

Q. In the year 1915? A. Yes.

Q. That included also the set of palms and myrtles? A. Yes.

Q. How many citrons did you have left? A. About 8,300 and something.

Q. What did you do with them? A. I stored them.

Q. Where? A. In the Arctic Refrigerating Company. 224

Q. Where is that? A. 120 West Street.

Q. How long did you keep them there? A. About five or six months.

Q. Did you examine them every month? A. Yes.

Q. Until when did you keep them? A. Until the end of March or the first of April.

Q. When you examined them last while they were in the storage house, what condition were they in? A. In very bad condition.

Mr. Miller: I move to strike that out.

The Court: Motion denied.

Mr. Miller: Exception. 225

Q. What did you mean, in bad condition? A. They were all spoiled.

Q. What did you mean by spoiled, were they dried up, or what? A. No; there were big holes on it, it falls in.

Q. Rotted? A. Rotted.

Q. What did you do with them in the early part of April? A. I dumped them in the river.

Q. Did you have the palms and myrtles necessary for those citrons? A. Yes.

226 *Plaintiff's Witness, Sundel Saland, Direct*

Mr. Miller: I object.

The Court: Sustained.

Mr. Miller: I move to strike out the answer.

The Court: Motion granted.

Q. You were acquainted with the market price of citrons during September, 1915? A. Yes.

Q. What was the reasonable value of citron in September, 1915, up to the holidays?

227 Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Miller: Exception.

A. Nothing.

Q. I mean in September; when was the holiday, what day? A. September 23rd.

Q. Now, I mean prior to the holidays, from the time you brought them over up to the time of the holidays, what was the reasonable market price of the citron? A. A citron itself, without the palm and myrtles?

Q. Yes? A. It has no value.

228 Q. It would go with the myrtle and palm, what would have been the value of a set?

Mr. Miller: I object to that as not within the pleadings.

A. \$2, \$3, \$4 and \$5 apiece.

Q. What would you have considered the value of the citrons separate from the others? A. It is a thing that is impossible, you could not sell only those together, combination; it is a set, we could not have it one without the other.

Q. Well, while they are together, what is the reasonable price of a citron, if you wanted to buy one,

what would you have paid for the citron alone, and if you wanted to sell one, what would you have paid?

A. Then it is three dollars, the lowest.

Q. I mean a citron alone, without any set? A. Without a set, nothing.

Q. What was the value of a set? A. From \$3 up.

Mr. Miller: I object.

The Court: Objection overruled.

Mr. Miller: Exception.

Q. You have in mind that they cannot be sold separately? A. Yes. 230

Q. We all know that. A. Yes.

Q. Assuming that you were making up a set? A. Yes.

Q. And if you went out to buy citrons and palms and myrtles, to make up a set, I am asking you what would be the market price of a citron, what would be the market price of the myrtle and the market price of the palm? A. The citron is about \$2.20 or \$2.25, and the palm about fifty cents.

The Court: That is enough. The citron is about \$2.25.

Q. During the month of September, 1915, after September 14th and 15th, state whether you got any letters cancelling orders? A. That is all I can find here (handing a paper to the counsel). 231

Q. I show you this telegram. Did you receive that on September 15th, 1915? A. Yes.

Mr. Fried: I offer that in evidence.

Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Miller: Exception.



232 *Plaintiff's Witness, Swndel Saland, Direct*

Received in evidence and marked Plaintiff's Exhibit No. 17.

(Mr. Fried reads Plaintiff's Exhibit No. 17 to the jury.)

Q. Did you get this telegram? A. (Witness examines paper handed him by counsel.) Yes.

Q. On what date? A. September 18th.

Mr. Fried: I offer this in evidence.

Mr. Miller: Same objection.

The Court: Overruled.

233 Mr. Miller: Exception.

Received in evidence and marked Plaintiff's Exhibit 18.

(Plaintiff's Exhibit 18 read to the jury.)

Q. Did you, on September 19th, get this inquiry by wire? A. (Witness examines the paper handed him by counsel.) Yes. It is coming in the name of Goldberg.

Q. Was Mr. Goldberg your agent? A. Yes.

Mr. Fried: I offer this in evidence.

Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

234 The Court: Objection overruled.

Mr. Miller: Exception.

Received in evidence and marked Plaintiff's Exhibit 19.

Q. Will you translate that into English? A. I don't know what that word means.

The Court: Then we will strike out the telegram.

Q. I show you this telegram dated September 20th, 1915, and ask you whether you received that? A. (Witness examines paper handed him by counsel.) Yes.

*Plaintiff's Witness, Sundel Saland, Direct*

235

Mr. Fried: I offer that in evidence.

Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Miller: Exception.

Received in evidence and marked Plaintiff's Exhibit No. 20.

Q. Did you try to sell any citrons prior to September 15th, before the publication of those articles?

A. Yes.

Q. Did you try to sell them after the publication of the articles? A. Yes.

236

Q. Did you notice any falling off in the sale of citrons after the publication as compared with the time before the publication? A. Sure.

Mr. Miller: I object to that on the ground it is incompetent, irrelevant and immaterial, and calling for the operation of the witness's mind.

The Court: Objection overruled.

Mr. Miller: Exception.

Q. What did you notice? A. I noticed that the day after it was quiet and nobody came in to inquire about citrons, and then I went in to a few people there, my customers, and they said, "How can you expect we shall buy, what they put it out in the papers, so we should not be able to sell."

237

Mr. Miller: I object to that as not binding on the defendant, and as hearsay.

The Court: Objection overruled.

Mr. Miller: Exception.

The Witness: "How can we be able to sell them?" So I had very hard difficulty to sell them; I give a guarantee to every one of them, that everything that

238 *Plaintiff's Witness, Sundel Saland, Direct*

will remain after they buy it, I have to return the money and by this arrangement I was able to dispose of a little.

Q. Did you take any back? A. Sure.

Q. From whom? A. I took back from Mr. Bach and from Rabbi Rosen.

Q. How much did you take back from Bach? A. It is all marked in my book.

Q. Take a look at it? A. I gave back to Rabbi Rosen \$16.

239 By the Court:

Q. How many citrons did you take back? A. It is about four.

By Mr. Miller:

Q. Four citrons? A. Yes. That is about five citrons, and then another two; it don't say the name, two citrons back, \$6.

Mr. Miller: I object, unless he can mention the persons from whom he took it back.

The Witness: Some are names and some are not names.

240 The Court: Objection overruled.

The Witness: Mr. Koch, I took back three, \$10. I paid back.

Schultz, ten.

Another citron \$3; it does not say who it is.

Mr. Ternichi, one back.

Rabbi Rubenstein, five.

Rabbi Rosen, four.

Rabbi Grossman, three.

Rabinowitz, fifteen.

*Plaintiff's Witness, Swndel Saland, Direct*

241

Well, I have some more names mentioned, but I could not find out how much it was; I know we had a whole lot.

Mr. Miller: I move to strike that out.

The Court: Strike out the last part.

By Mr. Fried:

Q. You have been in Palestine, haven't you? A. Yes.

Q. Prior to 1915? A. Yes.

Q. In past years? A. Yes.

Q. Do they use the Greek citrons over there?

242

Mr. Miller: I object.

The Court: Sustained.

Q. How many years did you go to Trieste, Austria, to buy citrons, prior to 1915? A. About twenty-four years.

Q. Every year you went to Trieste? A. Yes.

Q. What kind of citrons did you buy over there?

A. Greek citrons.

Q. Explain. A. Twenty-four years ago it was Korfu citrons at that time, too, but about twenty years, it is not any more Korfu, to Parga and Karmala.

243

By the Court:

Q. No more Korfu citrons come to Trieste? A. No; it is not any more from Korfu, any citrons.

By Mr. Fried:

Q. They do not produce them any more? A. No.

Mr. Fried: I call on the defendant to produce the check dated October, 1915, for \$80.

(Paper produced by defendant's counsel and handed to plaintiff's counsel.)

244

*Plaintiff's Witness, Sundel Saland, Direct*

Q. I will show you this check. Did you get this from the Hebrew Publishing Company? A. Yes.

Q. What is the date of it? A. October 6th, 1915.

Q. You got it from the Hebrew Publishing Company? A. Yes.

Mr. Fried: I offer it in evidence.

Received in evidence and marked Plaintiff's Exhibit 21.

Q. What was that check for? A. For thirty sets of citrons.

245

Q. What citrons were those? A. The same ones I had.

Q. When did you sell them to them? A. The 13th of September.

Q. Those were the same citrons you had been selling all through the city? A. Yes.

Q. Mr. Saland, prior to the holidays did a wagon pass up and down in front of your store on Division Street? A. Yes.

Q. What number Division Street were you? A. On Canal Street.

Q. What number was it? A. 41 Canal Street.

246

Q. Do you remember what was on that wagon? A. Yes.

Q. Was there any printed sign on that wagon? A. Yes.

Q. What did that sign contain?

Mr. Miller: I object.

The Court: Sustained.

Q. Did you see whose name appeared on the wagon under the sign? A. Yes.

Mr. Miller: I object.

The Court: Sustained.

*Plaintiff's Witness, Sundel Saland, Cross*

247

Q. When did that wagon pass your store?

Mr. Miller: I object to that as immaterial.

The Court: Sustained.

Q. Was that after the publication of the article that the wagon passed your store?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: I want to show certain other acts of the defendant.

The Court: You cannot show it by showing that a wagon passed the store with a sign on it. 248

Mr. Fried: We will connect it.

The Court: I have sustained the objection.

Mr. Fried: Exception.

Q. Did you see the name, did you examine the wagon and see whether it had any name on it?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception. That is all.

*CROSS-EXAMINATION by Mr. Miller:*

249

Q. When did you come to this country? A. In September.

Q. What year? A. 1915; from Greece.

Q. No; I mean, when did you settle here, from what country did you come? A. From Russia.

Q. When? A. 1883.

Q. When you came here you engaged in citrons? A. No.

Q. What line? A. Some other line of business.

Q. Do you remember? A. Yes; I was selling newspapers.

250

*Plaintiff's Witness, Sundel Saland, Cross*

Q. When did you start in the line of citrons? A. Twenty-four years ago.

Q. What citrons did you bring over to this country after you started? A. All kinds.

Q. When you say all kinds? A. Greece citrons and Palestine citrons.

Q. Where did you go to get these citrons? A. To Palestine and Triest.

Q. That is Austria? A. Yes.

Q. That is a market for citrons that come from Palestine? A. From Greece.

251 Q. That is a market for citrons that come also from Palestine? A. From Greece.

Q. That is a market, also, for citrons that come also from Palestine and some parts of Greece? A. That is the market from Greece.

Q. Do you know, or did you ever buy any citrons in that market that came from Palestine? A. Never.

Q. What part of Greece did they come from? A. Parga and Karmala, the place where the citrons are growing.

Q. Those were the only kind of citrons sold at the Triest market during that term of your experience; is that right? A. Yes.

252 Q. You never heard of dealers going to Triest and buying Palestine citrons? A. No; only when they buy Palestine citrons they go direct to Palestine.

Q. Did you ever hear of such a thing as citron dealers coming to Triest and buying Palestine citrons in that market? A. I do not know what anybody else done; I never done it.

Q. You say no Palestine citrons were ever sold there? A. I don't know about it; I only know Greek citrons are sold there.

Q. Do you remember I asked you whether or not you knew Palestine citrons in addition to Greek cit-

rons were sold in Triest markets, and you said no?

A. No; not as I know.

Q. Which is it? A. There was not any sold, either.

Q. Why did you say— A. How do I know?

Q. Then you don't know? A. I know the market is there for Greek citrons, to my knowledge, I do not know it.

Q. You do not buy any Palestine citrons there?

A. No.

Q. Did you ever buy in the Triest market any citrons that came from Korfu? A. Twenty-four years ago.

254

Q. Where is the market for the Palestine citrons?

A. In Jaffa.

Q. Is there a market for Greek citrons in Greece?

A. No.

Q. Did you hear of a market in Korfu for Greek citrons? A. No.

Q. Do you say now there has been no market for the past twenty-four years for Greek citrons? A. I did not hear about it.

Q. Will you say that citrons that grow in Greece are not sold at the Korfu market? A. I don't know of any market in Korfu.

Q. You never heard of a market being at Korfu for Greek citrons, during your experience of twenty-five years? A. No; I did not.

255.

Q. Don't you know as a fact there is still a market at Korfu? A. No; I don't know.

Q. When did you, for the first time, find out that there was a ban or prohibition declared upon citrons that come from Korfu? A. I never heard of it.

Q. You claimed you had been in this business for twenty-five years? A. Yes.

Q. That is the first time you ever heard, here in court, that there is such a claim made? A. I never heard of it.



256

*Plaintiff's Witness, Sundel Saland, Cross*

Q. You are telling the truth? A. Yes.

Q. Did you ever buy Korfu citrons? A. No; about twenty-four years ago, yes, I bought; but the last twenty years I did not.

Q. Since twenty-four years did you ever buy Korfu citrons? A. Not in the last twenty years.

Q. You say twenty-four or twenty years? A. Twenty years.

Q. Up to twenty years ago you had been buying, however, Korfu citrons? A. Yes.

Q. Since then you never bought any? A. No.

257 Q. Do you know the reason why you did not buy any more? A. It is not any in existence in Korfu any more.

Q. Is that the reason? A. Yes.

Q. That is the sole reason you did not buy any for the last twenty years, because they do not produce them any more? A. They do not produce them any more.

Q. Is that the reason? A. I do not need any other reason.

Q. That is your reason? A. If it would be, maybe somebody would inquire for it; he would buy it.

258 Q. If they were today in existence you would buy them? A. If somebody would inquire, I would buy them.

Q. If they had been in existence and they were to be purchased in Korfu, you would buy them? A. If somebody inquired, I would buy them.

Mr. Miller: I move to strike that out as not responsive.

The Court: Motion denied.

Q. In the year 1915, did you go to Triest? A. No.

Q. Why did not you go to Triest and buy citrons? A. There was no market there, and you could not get them.

*Plaintiff's Witness, Sundel Saland, Cross*

259

Q. You were not there? A. There was no market there.

Q. You were not there? A. In Triest?

Q. Yes. A. No.

Q. You went straight where? A. To Piraeus.

Q. The Piraeus market is where? A. In Piraeus.

Q. That is a port in Greece? A. Yes.

By the Court:

Q. It is the Port of Athens? A. Yes.

By Mr. Miller:

260

Q. When you got there you say you bought how many citrons? A. I bought there 15,000 citrons.

Q. All there? A. Yes.

Q. Did you expect to go to Palestine from there? A. Sure.

Q. What for? A. To buy Palestine citrons.

Q. After you had bought these citrons, 15,000, you expected to go to Palestine? A. No; I did not say it.

Q. I am asking you now? A. No; before I bought only 10,000 citrons.

Q. You bought 10,000 first at Piraeus? A. Yes.

Q. Then you had intended to go to Palestine to buy additional citrons? A. To buy another 5,000. 261

Q. What is this other place you bought citrons from? A. Piraeus don't grow any citrons, it is only the port. The citrons are grown in Parga and Karmala.

Q. Piraeus is the market for those two kinds of citron? A. Yes, I ship them from there.

Q. Did you go to Karmala yourself? A. No.

Q. Did you go to Parga? A. No.

Q. You stayed at Piraeus? A. Yes.

Q. Is this the market for citrons that came from Parga and Karmala? A. Yes, Piraeus was the market.

Q. After you had bought these 10,000 what did you do with them? A. I gave the order to the farmers they met me at the station when I come with the steamer, and I gave them the order and they went back home and prepared the goods and I was waiting there, and in the meanwhile I went to Alexandria and I came back in eight days and I telegraphed for another additional 5,000 and I was waiting there.

Q. You telegraphed to the same person you bought the former 10,000 from? A. Yes.

Q. You say you paid for these 15,000 citrons how much? A. \$9,378. I guess.

263 Q. Have you got a Consular invoice? A. I guess I have.

Mr. Miller: Will you produce it.

Mr. Fried: I do not think we have any Consular invoice.

The Witness: It is in the custom house.

Q. Aren't there two in existence, an original and a copy of these Consular invoices? A. No, I don't remember if I had one, but if I had one, Wells-Fargo knows about it.

Q. You paid out of the \$9,378—you paid \$4,000 in cash out there, and about \$5,000 C. O. D.? A. 264 \$5,500 and the balance I paid in cash.

Q. Right while you were there? A. Yes.

Q. It was brought over to you by what express? A. Wells-Fargo.

Q. Did you get any evidence or any writing for it? A. I did not get it.

Q. When you paid the C. O. D. did you get anything for it? A. I got for it a receipt.

Q. Where is it? A. I have it here (producing a paper and handing it to counsel).

Q. Is this the one? A. Yes.

Mr. Miller: I ask to have this marked for identification.

Paper marked Defendant's Exhibit A for identification.

Q. At the time you paid the \$4,000 you say you paid it to whom? A. The commissioner, I paid him the money and he paid to the farmers and he made the balance C. O. D.

Q. You mentioned the word Mahomet? A. Yes.

Q. Was this the farmer you bought it from? A. Yes.

Q. Did you pay the \$4,000 or about that to him? A. Yes, I paid him the whole money, for this stuff.

Q. You said some stuff came to this country and you paid C. O. D.? A. Yes.

Q. And some you paid in cash? A. The farmers get paid in cash for all their stuff.

Q. Did you pay this Mahomet in cash? A. I paid every one.

Q. Did you buy the 15,000 citrons from more than this particular one? A. From all farmers from this farm and from Karmala farmers.

Q. How much did you buy from Mahomet? A. 3,000.

Q. Did you pay cash to him? A. The commissioner paid him, I paid the money to the commissioner and the commissioner paid it to the farmer.

Q. Did you get a receipt for it? A. Sure, I have the bill.

Q. I mean out there in Greece? A. I paid him all the money and here is the bill he gave to me, and the balance I paid C. O. D., here is 29,000 francs.

Q. Where is the \$9,378 which you claim you paid there? A. There it is, figure it.

Q. You claim the trip cost you a thousand dollars? A. Yes.

Q. How do you make that out? A. My trip and my expenses.

268

*Plaintiff's Witness, Sundel Saland, Cross*

Q. Tell us how you make out this sum of \$1,000 for this particular trip? A. Yes, that is what it cost me.

Q. Can you state in detail how you made up this amount? A. It cost me coming over, the voyage there and back.

Q. Tell us how much did you pay to go there? A. About \$125 each way, \$250 the steamer.

Q. \$250 for the steamer? A. I guess so.

Q. You guess so? A. I could not say exactly. I would have to look up my books.

269 Q. Aren't you prepared with proof? A. All my total expenses I have.

Q. Look at any book you have showing that you paid \$125 each way, \$250 in all? A. Yes, I paid going over \$75 and coming back I paid \$125.

Q. How was it that you paid for the voyage back \$50 more than going there? A. It was a better steamer.

Q. Anything else you paid? A. Then I have hotel bills.

Q. Where did you stop? A. In Piraeus.

Q. What hotel? A. I really don't remember the name, I guess it was the Grand Hotel.

270 Q. How long were you at Piraeus? A. About three weeks.

Q. How much did you pay there a week? A. I paid about 15 francs a day.

Q. How much in American money is that? A. About \$3 I paid 25 francs a day.

Q. Have you it entered in your books? A. No.

Q. Have you got any entry in this little book? A. No, I have some other little books home.

Q. This \$75 that you mention and \$125, is that entered in your little book? A. No, the \$75 is entered.

*Plaintiff's Witness, Sundel Saland, Cross*

271

Q. That is about all you have got there? A. Yes.

Q. The other book you say you left home? A. Yes.

Q. Is it entered in that little book like this? A. I have some other books.

Q. Haven't you got a regular system of books? A. No.

Q. Do you keep any books in your place of business? A. Yes.

Q. Regular books? A. No.

Q. What books do you keep? A. That is my book (indicating).

272

Q. What did you enter in these books? A. All that belongs to this business. It was not my private book. I had some connection with Mr. Cutler, everything which belongs to me and Mr. Cutler was entered in this book.

Q. In 1915 did you have any connection with Mr. Cutler? A. Yes.

Q. Was it a partnership business? A. In some way.

Q. It was? A. Yes.

Q. This claim that you have against the defendant, was Mr. Cutler interested in it? A. Well, maybe he would be interested if he would bring a claim against it, he would be interested, maybe he will bring up the claim, I don't know what he will do.

273

Q. You said this particular business at that time you conducted in a partnership sense with Mr. Cutler? A. Yes.

Q. And that the stock in question and the claim you make against the defendant, Mr. Cutler is interested in that claim? A. Yes.

Q. And that that particular claim is to some extent a partnership claim? A. Yes.

Q. Yet you brought this action in your own name? A. Yes.

274

*Plaintiff's Witness, Sundel Saland, Cross*

Q. You kept books and you say you made entries. Why didn't you enter in these books the expenses you claim you had, obtaining the citrons? A. It is agreed by Mr. Cutler and myself that no expense shall be put up and we should not have any figures, about how much the goods cost, only we took in the goods, I had 15,000 and Mr. Cutler had about 5,000 so that makes a total of about 20,000 and then additional I bought him about 1,000, makes 21,000, which we had in, so we set a price for each set so we made it the lowest which it could be on account I don't  
 275 want to tell Mr. Cutler what it cost me and he did not want to tell me what it cost him, the goods, and we made a certain price and if it was more than that price it showed a profit.

Q. Were you afraid to disclose the price to your partner? A. We did not have a regular partnership.

Q. You both of you put your stock together, 15,000 of yours and 5,000 of his? A. Yes.

Q. You tried to keep him in the dark as to how much yours cost? A. No, we make a certain price for these citrons.

Q. You did not tell him how much you bought it for? A. Yes.  
 276

Mr. Fried: That is objected to.

The Court: Objection overruled.

A. We made a certain price for it.

Q. You did not want to disclose to him how much you paid for yours, is that right? A. Well, maybe it is.

Q. He did not care to tell you how much he paid for his? A. I did not care to know it.

Q. Both of you however tried to establish a price for them, is that right? A. Yes.

Q. Irrespective of what each one paid for it? A. Well, we put it in the price, what we paid' for it, the lowest price what we could figure on it.

Q. I ask you again in view of all that, why did you fail to enter in the book the expenses you had?

A. Because we did not figure any expenses. I did not want to accept Mr. Cutler's expense, and Mr. Cutler did not want to accept my expense.

Q. Didn't you want to know in the future how much expenses you had in order to find out how much profit you wanted to make on them? A. That is what I have got.

278

Q. Where? A. In this book.

Q. Have you your expenses of the trip entered?

A. Yes. You want everything in items, I have not items. I have here \$1,000 for expenses.

Q. You have not got the details? A. In my little book.

Q. Where is the little book? A. Home.

Q. Will you bring it tomorrow, please? A. Sure.

Q. Did you make the entries in the little book at the time you paid or have you made these entries since you brought this action? A. Sure.

Q. When you came back, do you remember when you arrived here in New York? A. Yes.

279

Q. When? A. August 26th.

Q. On what steamer? A. "Matilas Constantinas."

Q. Did you open a store? A. Yes.

Q. Did you open a store before? A. What do you mean?

Q. Did you conduct a store prior to your leaving for Greece? A. No.

Q. When did you open your store? A. After I came back, after I had my goods.

Q. When was that, what month? A. The last part of August.



280 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Where did you open it? A. 41 Canal Street.

Q. Is that a corner, 41 Canal Street? A. Yes.

Q. What corner is it? A. Canal and Ludlow.

Q. What store did you have there? A. No. 41.

Q. Are there more stores than yours, more than the one you had? A. I don't understand.

Q. At the time you occupied this store had there been more stores than this one in this particular building? A. It is only one store but two doors.

Q. It has two entrances? A. Yes.

Q. It is the same store? A. Yes.

281 Q. It is known as No. 41 Canal Street on one side and what number on Ludlow Street? A. I don't remember the number.

Q. No. 5 Ludlow Street? A. Yes.

Q. It is from there that you had been trying to sell the citrons from your store? A. Yes.

Q. Your partner Mr. Cutler was with you in that store? A. Yes.

Q. He also conducted the place with you together? A. Yes.

Q. You had advertised in the newspapers as soon as you got these citrons over here? A. Yes.

282 Q. When did you first start to advertise? A. I don't remember the date.

Q. Do you remember what Jewish issues you advertised in? A. Yes. I guess September 8th was the last issue.

Q. In 1914 did you also advertise in Jewish issues at the time you were selling citrons? A. I did not get it.

Q. You had been in the business of selling citrons in 1914? A. Yes.

Q. Do you remember what store? A. Yes, East Broadway.

Q. 133 East Broadway? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

283

Q. Just about before the time came of these Jewish festivities you advertised in the Jewish issues concerning the sale of citrons that you had? A. Yes.

Q. I show you this? (Witness examines the paper handed him by counsel.)

Q. Is that your advertisement? A. Yes.

Mr. Miller: I offer that in evidence. It is dated September 24th, 1914.

The Court: Is it translated?

Mr. Miller: Yes, I have a translation here. I offer both the original and the translation.

284

Mr. Fried: I don't know whether the translation is correct?

Mr. Miller: Then I offer the one in Yiddish.

Received in evidence and marked Defendant's Exhibit B.

Q. How many citrons did you bring over to this country in the year 1914? A. About 13,000.

Q. Where did you buy them? A. From Palestine the most. I bought them myself from Palestine. This year was the year the war broke out.

Q. Out of the 13,000 that you bought in 1914 how much of it was Palestine and how much Greece? A. Could not get Greece, only a little bit.

285

Q. Tell us how much of the 13,000 was Palestine? A. 10,000 Palestine and 3,000 from Greece, because we could not get the Greece—

Mr. Miller: I move to strike that out.

The Court: Motion granted.

Q. Where did you buy the Palestine citrons? A. In Palestine.

Q. What part? A. Jaffa.

Q. Which did you buy first, the Greece 3,000 or the Palestine? A. The Palestine.

286

*Plaintiff's Witness, Sundel Saland, Cross*

Q. First 10,000 the Palestine? A. Yes.

Q. Then you bought? A. I could not go this year to Greece.

Q. In 1914 after you got the 10,000 in Palestine, you went where? A. Home to New York.

Q. You bought your 3,000 Greece citrons right in the New York market? A. No, in Triest.

Q. You went to Triest? A. Yes, there was no market there.

By the Court:

287

Q. How did you go from Palestine to Triest? A. I went over to Naples.

Q. What time of the summer was that? A. In July or August.

Q. Had the war broken out? A. The war broke out in August.

Q. Was it after the war had started? A. Yes, after the war had started.

Q. Then you went over? A. I went over from there to Egypt and from Egypt to Naples.

Q. Direct? A. Direct and from Naples I took the train and went over to Triest and came over and saw there was war and I had my wife and child over there.

288

By Mr. Miller:

Q. When you reached Triest did you buy any there? A. No.

Q. Then you went back to New York? A. Yes.

Q. Then in New York you bought additional three thousand? A. No.

Q. Where did you buy the 3,000? A. They sent me over from Triest in the latter part after I went there.

Q. Then you did order some in Triest while you were there? A. I did order, yes.

Q. They were sent to you afterward? A. Yes.

Q. Those that came from Triest, did you know from where they came? A. Yes.

Q. From whom did you buy them? Who was the particular person you bought them from in Triest?  
A. From Matoni Suli.

Q. Did you tell him you wanted— A. Also Karmala.

Q. They are Greek citrons? A. They are Macedonian citrons.

Q. Thereafter you received 3,000 in New York?  
A. Yes.

290

Q. During all these years prior to 1915 and particularly in the year 1913 and 1914 and several years immediately prior thereto, did not you as a matter of fact buy the most of the citrons, perhaps as much as 90% Palestine citrons? A. No, sir.

Q. In 1914, you said you bought 13,000 and only 3,000 from Triest. In 1913 did not you buy Palestine citrons? A. Pretty near half.

Q. How much did you buy altogether? A. About 12,000 or 13,000.

Q. Was not the most of it Palestine? A. No.

Q. How much was each one? A. About a half.

Q. Half and half? A. Yes.

291

Q. In 1912? A. About the same.

Q. In 1915 why did you buy 10,000 in Greece if you intended to buy only 5,000 Palestine? A. Because I know it is difficult to get them, I imagined it would be very difficult to get them over so I thought maybe 5,000 I would get.

Q. That is why you had intended to leave room for 5,000? A. Yes.

Q. In your course of business did you advertise in the Jewish papers and advise and inform the Jewish public what kind of citrons they were that you were offering for sale?

292

*Plaintiff's Witness, Sundel Saland, Cross*

Mr. Fried: I object on the ground that is not proper cross-examination.

The Court: Objection overruled.

Mr. Fried: Exception.

Q. In your course of business did you advertise in the Jewish papers and advise and inform the Jewish public what kind of citrons they were that you were offering for sale? A. Which year?

Q. Prior to 1915? A. No.

By the Court:

293

Q. Before 1915? A. Before 1915 I said I have all kinds.

By Mr. Miller:

Q. In your advertisement, did you state where those citrons you were advertising came from? A. In 1915 I stated Palestine citrons and I want to make some explanation.

Q. In 1915, at the time in question here did you advise the Jewish public as to what kind of citrons you were offering for sale in your advertisement?

Mr. Fried: I object to the word "advise."

294

By the Court:

Q. Did you inform them or did you so advertise? A. Yes, I did.

Q. That these were Greece citrons? A. That these were Greece citrons.

By Mr. Miller:

Q. In 1915? A. Yes.

Q. You are telling the truth? A. Yes.

By the Court:

Q. You advertised that? A. Yes.

*Plaintiff's Witness, Irving Altman, Direct*

295

By Mr. Miller:

Q. Is that your advertisement of 1915, is that your name affixed to the advertisement?

(Witness examines the paper handed him by counsel.)

A. Yes.

Mr. Miller: I offer that in evidence.

Mr. Fried: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

296

Mr. Fried: Exception.

Received in evidence and marked Defendant's Exhibit C.

Recess to February 27th, 1917, at 10 A. M.

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New York, February 27th, 1917.

Mr. Fried: It is conceded that the same article that was published in the Wahrheit and the Jewish Morning Journal was also published in the Day on September 16th, 1915.

The Court: You will also concede it was published by you?

297

Mr. Miller: I will concede it was caused to be published by the defendant corporation.

IRVING ALTMAN, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

*Direct-examination, by Mr. Fried:*

Q. Are you connected with the Jewish Day? A. Yes.

298      *Plaintiff's Witnesses, Schnukler, Direct—Saland,  
Cross*

Q. In what capacity? A. Business manager.

Q. In 1915 what was the circulation of your paper?

A. Do you mean that particular day or the average during the year?

Q. During the year 1915? A. Close to 80,000.

Q. Was that the same during the month of September, 1915? A. During September it was 76,235.

299      MOSES SCHMUKLER, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

*Direct-examination by Mr. Fried:*

Q. Are you connected with the Jewish Daily Wahrheit? A. Yes.

Q. It is known as the Wahrheit? A. Yes.

Q. It is a Jewish daily? A. Yes.

Q. In what capacity are you employed? A. Chief clerk.

Q. Are you familiar with the circulation of that paper during the year 1915? A. Yes.

300      Q. In September, 1915? A. Yes.

Q. What was the circulation of that paper? A. 75,000.

SUNDEL SALAND, the plaintiff, resuming, testifies as follows:

*Cross-examination resumed by Mr. Miller:*

Q. You related yesterday on your direct-examination the history of your journey to Greece? A. Yes.

Q. In the year 1915? A. Yes.

Q. You testified that you went to Piraeus? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

301

Q. And there you bought 10,000 citrons? A. Yes.

Q. Thereafter you made an attempt to go to Jaffa? A. Yes.

Q. To buy Palestine citrons? A. Yes.

Q. 5,000? A. Yes.

Q. And that you were unsuccessful in your attempt and on your return you bought an additional 5,000 at Piraeus? A. Yes.

Q. This is a correct history of your journey? A. Yes.

Q. Look at this article or announcement in this Jewish issue. Is that your paid advertisement? A. I did not write it. 302

(Witness examines the paper handed him by counsel.)

Q. I did not ask you whether you wrote it. Did you pay for this advertisement? A. I don't know.

Q. You don't know whether you paid for this advertisement? A. I don't know.

Q. Did you cause it to be published—don't look at your lawyer, look at me?

Mr. Fried: I object.

By the Court:

303

Q. Did you cause that to be published? A. I don't know, I don't remember.

Q. Have you any doubt that you caused it to be published? A. At this time, I don't know. I had some interviews, the man came over to me and he put up an advertisement.

Q. You don't know whether you did that? A. I don't believe I did it.

By Mr. Miller:

Q. Don't you know that you paid for this very article or announcement in the Morning Journal of September 8th, 1915? A. I don't know if I did.



304 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Have you any papers or records to show when you pay for advertisements? A. Yes, I have checks.

Q. Have you bills? A. No.

Q. Don't you take any bills or receipts when you pay for one? A. Yes.

Q. Can't you locate September 8th, 1915, the Morning Journal, whether you paid for this advertisement? A. I don't remember, you can look it up.

Q. You won't swear you did not? A. No.

Q. You might have paid for this advertisement? A. Maybe, I don't know.

305 Q. Didn't you in this very announcement to the Jewish public state as follows—

Mr. Fried: I object.

The Court: Objection overruled.

Mr. Fried: Exception.

306 Q. Didn't you state in the Jewish Morning Journal of September 8th, 1915, as follows: "England stops a ship with Palestine esrogim, confiscate more than 12,000 destined to America. No difference says an English officer in Gibraltar, Esrogim are bombs, Turkey is our enemy and everything that comes from them is contraband. The well known importer of Esrogim, Mr. S. Saland, has just returned from a perilous journey to Palestine and instead of bringing many Esrogim as he does every year, he has now brought a whole pack of trouble."

Mr. Fried: I object unless this article is brought home to the defendant.

The Court: Objection overruled.

Q. (Reading.) "And tales of adventures, and travels which he will remember for many years, and the esrogim which he carried with him were confiscated by the English Government: by a miracle he

succeeded in bringing some esrogim that will not suffice to supply even ten per cent of the usual demand for esrogim that is every year. Mr. Saland left New York on the 19th of June, on the steamer 'Salonika' and on the steamer with him were several Red Cross physicians and several American citizens. When they arrived at Gibraltar several English officers detained the ship and after great efforts and the intervention of the American Consul the passengers were released and allowed to proceed to Alexandria, Egypt. When Mr. Saland arrived in Alexandria and desired to proceed to Jaffa he found out to his sorrow that it is impossible not even to go to Jaffa but to send there a telegram or letters, all communication being cut off and it has taken considerable time and effort before Mr. Saland has succeeded in getting together esrogim, but on the journey the English Government declared the esrogim is Turkish contraband and has seized them and turned them over to the English Army to make preserves for the soldiers. All appeals were in vain. Mr. Saland had to leave without esrogim and only in Piraeus he procured some esrogim which he brought to America with great difficulty.

"As Mr. Saland stated to the reporters, the American Jews will experience a great scantity of esrogim this year, because he obtained only a small lot at high prices. He says the dealers will be glad if they will be able to at least fill some of the orders and he who will come first will have the privilege, he will somehow manage to get esrogim and for all this we have to thank this bloody war which destroys the whole world." A. No.

Q. Now, you know you did not, but you said you didn't remember when you were read the Jewish of it?

310: *Plaintiff's Witness, Sundel Saland, Cross*

Mr. Fried: I object to that as unfair to read the whole article and ask him as to the truth of it.

The Court: Objection overruled. He is asking whether he gave that statement to the paper. The objection is overruled. Until proof is put in that he did give that statement to the paper the defendant is bound by his answer that he did not.

Mr. Fried: Exception.

Q. When I put the question to you to read the  
311: Jewish version of it, you read it and you had doubts about it? A. I said no, I did not give this statement.

Q. Did you say no, or you did not remember if you paid for this advertisement? A. I don't know if I paid for it.

Q. You might have paid for it? A. I don't know.

Q. That is your best answer? A. Yes.

Q. Is there anything you could locate or put your finger on to refresh your memory whether you did or did not? A. I believe I did not.

Q. Have you any papers or records to refresh your memory on that subject? A. No.

312: Q. Did you not state you had obtained 12,000 Palestine esrogim and that they were confiscated by the English Government and that is why you could not bring them over to this country? A. No, I gave my statement on the same day to the Jewish Daily News. You see what is written there.

Q. What day? A. September 8th.

Q. September 8th to the Jewish Morning Journal?

A. No, the Jewish Daily News, I gave the statement. Here I did not give any statement.

Q. Yet you cannot remember whether you paid for this advertisement or not? A. I don't remember.

*Plaintiff's Witness, Sundel Saland, Cross*

313

Q. Did any such thing happen to you as I have read to you? A. No.

Q. On your journey? A. No.

Q. Nothing that has been read to you? A. Which part?

Q. Any part of it that I have read to you?

Mr. Fried: I object to that as unfair.

Mr. Miller: The question is withdrawn.

Q. Were there 12,000 citrons confiscated of yours? A. No.

Q. Is it a fact that you only brought over after so much trouble ten per cent of the usual demand of esrogim during the year 1915? A. No. 314

Q. Did you go on the steamer "Salonika"? A. Yes.

Q. Where did you land? A. In Piraeus.

Q. Did you arrive at Gibraltar with that steamer? A. Yes.

Q. Was the ship detained there? A. Yes.

Q. Was it a fact that after great effort by the American Consul you were released? A. Yes.

Q. You were permitted to go to Alexandria, Egypt? A. Piraeus.

Q. Not Alexandria, Egypt? A. No. 315

Q. Did you arrive at Alexandria, Egypt? A. Afterwards from Piraeus I went to Alexandria.

Q. You did not go from Gibraltar to Alexandria directly? A. The steamer went from Gibraltar to Piraeus.

Q. You stopped off at Piraeus? A. Yes.

Q. And then proceeded to Alexandria? A. Then I took another steamer a few days later.

Q. You first bought your stock in Piraeus? A. Yes.

316 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Is it a fact that any of your esrogim were declared Turkish contraband and were delivered to the English Army? A. No.

Q. And used as preserves for the soldiers? A. No.

Q. Did you state that there would be a great scarcity of esrogim this year, meaning 1915, because you only obtained a small lot at high prices, did you so state? A. To whom?

Q. Did you so state to anybody? A. Yes.

Q. As a matter of fact this statement was not true?

317 A. No.

Q. In previous years, take 1912, 1913, 1914, how much did you pay for a citron, for a Greece citron? A. Two and one-half francs.

Q. That is how much in American money? A. About fifty cents.

Q. In 1915, the year in question? A. Three francs.

Q. That is how much in United States money? A. Sixty cents.

Q. So there was a difference of about only ten cents? A. Yes.

By the Court:

318 Q. You mean you paid three francs delivered over here? A. No, over there.

Q. How much was the cost of transportation? (No response by the witness.)

Mr. Miller: He testified that he paid \$9,-378, which means about sixty cents a piece.

The Court: That is why I was asking the question.

By Mr. Miller:

Q. You testified that you paid for 15,000 citrons, \$9,378? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

319

Q. Which is about sixty cents a piece, and that included bringing over here, do you remember you so testified? A. Yes.

Q. Did you so testify? A. I have the bill here.

Q. Did you so testify, please? A. Yes.

Q. So that when you received them in New York they cost you about sixty cents a piece? A. More than that, the bill shows that.

Q. I asked you about your testimony?

Mr. Fried: Give him a chance, you cut off his answer.

The Court: Proceed.

320

Q. Just a minute ago it was suggested to me by the Court to ask you this question and I ask you, did not you testify that you only paid \$9,318 for 15,000 citrons, including the cost of delivery? A. Yes.

Q. You so testified on your direct-examination? A. Yes.

Q. You stick to it now? A. Yes.

Q. That makes about sixty cents a piece? A. Well, I had—

Q. Does it make about sixty cents a piece? A. Maybe I did not figure it up.

Q. Will you take your pencil and figure it up? A. No.

321

Q. You did not buy any Lulavim in Greece? A. No.

Q. Your Lulof, you buy that in this country? A. In Italy.

Q. Do you buy also Lulavim in this country? A. Yes.

Q. Why do you always when I put the question to you—

The Court: Don't argue with him.

Q. You bought them in Italy at what market? A. What price?

322. *Plaintiff's Witness, Sundel Saland, Cross*

Q. What market in Italy? A. In Italy.

Q. Where? A. Bodigura, Italy.

Q. What sort of a city is that, is it a harbor, a port or what? A. It is a small city near Genoa.

Q. Did you buy those on your return trip in 1915?

A. I gave the order from there, from Piraeus I sent it by telegraph.

Q. Did you buy during the year 1915 also Lulavim in this country? A. Yes.

Q. From what market? A. I bought it here from a man, he bought it from California.

323. Q. In your experience you always bought Lulavim in this country as well as in Italy? A. No.

Q. Is that the first time you ever bought American Lulavim? A. No big quantity.

Q. You used to buy it in small quantity? A. Small quantity.

Q. Is there a market for buying citrons also in New York which is about prior to the Hebrew holidays? A. Merchants buy also citrons without palms?

Q. Yes? A. No.

Q. Never? A. Maybe somebody has palms, is buying citrons alone.

Q. Did you ever sell any citrons alone in your life?

324. A. Yes.

Q. You did? A. Yes.

Q. You sold that without any question whether you have furnished any palms or not? A. No.

Q. You sold that independently? A. Yes.

Q. As an article in itself? A. Yes.

By the Court:

Q. Are not citrons dealt in here for preserves as a regular article of commerce for preserves? A. Yes.

Q. They are regularly sold here as a regular article of commerce? A. After the holidays then they sell them for preserves.

*Plaintiff's Witness, Sundel Saland, Cross*

325

Q. Are not they sold through the year for preserves? A. No.

Q. Only after the holidays? A. Yes, if it remains something.

Q. Are not citrons bought by candy manufacturers in March, April and June? A. No.

By Mr. Miller:

Q. Don't you know we have citron cakes through the year and they come directly from California citrons, did you ever hear about it? A. No.

Q. All you know is that citrons are only used after the Jewish holidays as preserves? A. Yes. 326

Q. The wholesale store that you say you conducted and opened was at Canal Street and Ludlow Street, is that right? A. At Canal and Ludlow.

Q. It has two numbers? A. Yes.

Q. On Canal Street it is known as No. 41, is it? A. Yes.

Mr. Fried: That was all gone over yesterday.

Mr. Miller: I am just leading up to something.

The Court: Go on.

Q. The entrance on Ludlow Street is known as No. 5 Ludlow Street? A. Yes. 327

Q. Before the holidays have you been in the habit of advertising from No. 41 Canal Street and Mr. Cutler advertising from 5 Ludlow Street? A. Yes.

Q. To the Jewish community? A. Yes.

Q. About buying citrons? A. Yes.

Q. That is the same store? A. Yes.

Q. Why did you do that? A. Because it is our customers that are dealing with Mr. Cutler for years and they want to deal with him and there are customers who want to deal with me for years and they want to deal with me, at my number.



328 *Plaintiff's Witness, Sundel Saland, Cross*

Q. In this particular year you testified that Mr. Cutler and you were interested in the same shipment and you were partners together? A. I did not testify partners.

Q. You testified to a certain extent partnership?  
A. Yes.

Q. Why did you in this particular instance advertise from two different addresses? A. I advertised because I have my customers and Cutler has his customers and another man, Goldberg, he has his customers.

329 Q. Was not it rather the reason to conceal the fact to the Jewish public that you and Mr. Cutler were in the same business in partnership? A. No.

Q. That was not the reason? A. No.

Q. And in order to appear as independent merchants on the same article?

Mr. Fried: I object to that as already answered. The man has already given his reason twice.

The Court: Objection overruled.

Mr. Fried: Exception.

330 Q. You opened your store what month in 1915?  
A. August 27th.

Q. How much rent did you pay for your store?  
A. \$100.

Q. Did Mr. Cutler share in the expenses of rent?  
A. Yes.

Q. Did he pay you? A. Yes.

Q. Both of you together paid the expenses for maintaining and conducting that business? A. Yes.

Q. Did you pay for the advertising, your own advertising, as well as Mr. Cutler's in Hebrew and Yiddish papers? A. Not all of them.

Q. Did you pay any one of them together? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

331

Q. Did you also pay for the advertisements of T. Goldberg that you testified yesterday was some sort of an agent for you? A. Yes.

Q. Did you pay for those advertisements in Yiddish papers? A. Yes.

Q. Who was Mr. T. Goldberg, what sort of an agent was he? A. He is a man who is always an importer for himself all the previous years and in 1915 he did not go over to import any so I made arrangements with him I shall give him a certain amount for his customers and he has got to attend to business in his name as in previous years.

332

Q. Do you know the advertisement that you paid for from Mr. Goldberg and did you cause it to be published?

(Witness examines the paper handed him by counsel.)

Q. And also the following one, Mr. Cutler's and your own? A. I paid for Mr. Cutler and for myself.

By the Court:

Q. And for Mr. Cutler's? A. No.

By Mr. Miller:

333

Q. You did not pay for Mr. Cutler's? A. No, not this one.

Q. You knew the contents of that advertisement? A. I did not see it.

Q. You never saw it before? A. Yes, but I did not know what it is.

Q. Did you see it in 1915 when it appeared in the paper? A. I suppose I did.

By the Court:

Q. When you advertise in the paper does not the paper send you a copy of the set up? A. Yes.

334 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Does not that contain Mr. Cutler's advertisement between Mr. Goldberg's and yours? A. No. They send to everyone a copy.

Q. Would not they send you a copy of the whole set-up? A. No, only mine.

By Mr. Miller:

Q. You testified yesterday that you have disclosed and informed the Jewish public as to the nature and character of citrons that you had in the year 1915 in your advertisement? A. Yes.

335 Q. Read that please, and tell us whether you see a word as to where these citrons which you were offering for sale came from, in your own advertisement? A. Not in this one.

Q. So that as to this one you were not correct when you so testified? A. No, I did not say here, the contents of the advertisement, what the citrons is.

Q. You did not say where these citrons came from in this advertisement in the Morning Journal of September 8th, 1915?

(Witness examines the paper handed him by counsel.)

336 A. No.

Q. You did not say a word as to where these citrons came from which you are offering to the Jewish public? A. No.

Q. You testified yesterday that in 1915 you have advertised in all the papers as to the nature and character of the citrons? A. I did not.

Mr. Fried: I object to that as not a proper statement of the testimony.

The Court: Objection sustained.

Mr. Miller: Question withdrawn.

Q. You also testified yesterday that you never heard until in court for the first time that there was a ban or prohibition upon citrons coming from Korfu which was the first time you heard of it when I told you that in court?

Mr. Fried: I object to that as not a proper quotation from the testimony.

The Court: I can't remember. You gentlemen will have to remember that.

Q. Did you know that there was a ban or a prohibition on Korfu citrons—I ask you that and you said no, and then I asked you did you try to buy any Korfu citrons and you said the reason you did not buy any was because they did not produce it and if they did produce it you would buy it? 338

Mr. Fried: I object to that on the ground there is no such testimony given by the witness and on the ground that the question misquotes the testimony.

The Court: At no time did he say he would have bought it if there had been Korfu citrons in the market without the qualification that he would have bought it if there was a demand. 339

Q. Did you testify yesterday in substance or effect, first that you did not know and never heard of a ban or prohibition on Korfu citrons, is that correct? A. Yes.

Q. And you testified to my question, that if there were requests or a demand made upon you for Korfu citrons and if they were produced you would buy them? A. Yes.

Q. You swore to the complaint in this action?

Mr. Fried: No, he did not. This is on information and belief.

340 *Plaintiff's Witness, Sundel Saland, Cross*

The Court: If he swore to it on information and belief, he swore to it.

Mr. Fried: Yes, on information and belief.

The Court: He did not verify it.

Q. Did you ever read the complaint in this action?

A. Yes.

Q. You knew the contents of it, what you are stating therein? A. Yes.

Q. You say you were familiar with the contents of the complaint, you read it and you knew what was in it? A. Yes.

341 Q. As early as November 15th, that is the date of your summons and complaint? A. Yes.

Q. You read this complaint? A. Yes.

By the Court:

Q. Do you remember where you were in November? A. In November, I guess I was in Europe.

By Mr. Miller:

Q. When did you read it? A. When I came back.

Q. When? A. I don't remember the exact time, before I signed it, I read it.

342 Q. Did you sign it? A. I don't know if I signed it, I read it. You say it is my signature on it.

Q. You say you read this complaint before you came to trial however? A. Yes.

Q. Can you locate the time when you read this complaint? A. No.

Q. About when, how soon after you came back? A. I don't remember if it was—I do not remember exactly the time.

Q. You know you returned in August. A. I went the second time over to Europe.

Q. When did you go the second time to Europe? A. I guess it was the first part of October.

*Plaintiff's Witness, Sundel Saland, Cross*

343

Q. The first part of October, 1915? A. Yes.

Q. You returned when? A. I don't remember exactly the date.

Q. Can't you please give us your best recollection?  
A. About two months I guess.

Q. That is about December? A. Yes.

Q. Of 1915 you came back? A. Yes.

Q. You read this complaint? A. I don't remember if I read it or not.

Q. You don't remember when you read it? A. When I read it.

Q. However, you read it? A. I read it when I signed it. 344

Q. Did you read paragraph 7 of the complaint on information and belief that the meaning of the afore-said libelous article and charges which the defendant sought to make and did make against the plaintiff are that the plaintiff in collusion with a small number of other cedar dealers was misleading the Jewish public and inducing them to buy Korfu cedars which were of no value whatsoever, unclean, repulsive to the Jewish instinct and prohibited by the rabbis. Did you read this before you came to court? A. Yes.

Q. Yet you claim that you did not know until I called your attention yesterday that there was such a thing as a prohibition upon Korfu citrons? A. Before this time I said. 345

Q. A minute ago you testified when I asked you — A. I did not understand you.

Q. It is now when I call your attention to the statement you made in the complaint, it is now that you say you did not understand me right? A. If I read it, I know it. I did not understand it right before this issue of this paper came out in 1915, I did not hear of any prohibition on these citrons.

Q. Now, you did not hear of it until 1915? A. Of the prohibition on it.

346 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Prohibition on Kofu citrons? A. Yes.

Q. You did not hear of such a prohibition on it until when? A. Until the Hebrew Publishing Company came out with their article.

Q. That is the first thing you knew of such a thing? A. Yes, the prohibition.

Q. Yesterday you testified the first thing you knew of it was in court? A. When this issue came out.

Q. Don't you know as a dealer in citrons for ten years that for twenty odd years, don't you know of a prohibition since 1891 on Korfu cedars? A. It was not.

Q. The first time you heard of it was in 1915 when it came out in the papers, when the article appears?

A. I did not learn it but I hear it from the Hebrew Publishing Company in the Jewish newspapers.

Q. Up to that time you never heard of such a thing? A. I do not know it yet.

Q. Not even now? A. I say there is no prohibition on it.

Q. You take issue and say there is no prohibition on it? A. Yes.

Q. That is what you claim now? A. Yes.

Q. That is the truth? A. Yes.

348 Q. How much did you pay for the month of August for No. 41 Canal Street? A. \$100.

Q. How much did Mr. Cutler contribute toward that expense? A. His share was one-quarter of it.

Q. How much did you pay? A. I paid it all, but his share is one-quarter of it.

Q. One-quarter of it was paid by Mr. Cutler? A. By Mr. Cutler.

Q. You kept the store open for how many months? A. Until September 22nd in the evening.

Q. Is that about a month? A. That is over, about a month, yes.

*Plaintiff's Witness, Sundel Saland, Cross*

349

Q. You are charging this month in your expenses here? A. Yes.

Q. In such damages as you testified yesterday you put in as one item of expense this month's rent? A. Yes.

Q. You did not make any allowance?

The Court: There are no damages as to rent before the jury. The measure of damages will be the difference in value of what he might have gotten for his citrons and what he did get.

Mr. Miller: Then I withdraw that. Does that apply also to other items of damages?

350

The Court: All expenses. No expenses are going before the jury.

Q. You say that you brought the citrons from Parga and Karmala, those are the two places you stated? A. Yes.

Q. Are you correct on that? A. Yes.

Q. That is true? A. Yes.

Q. From no other place? A. Prevesa.

Q. Did you mention any other place than Parga and Karmala, did you mention the word Prevesa? A. I don't remember.

Q. Are you correct now that those are the only three places? A. Yes. Pardon me, there is another place, Rapesa.

351

Q. Did you come to that conclusion after you saw us looking—

Mr. Fried: I object.

Mr. Miller: Withdrawn.

Q. You have got it right now? A. Yes.

Q. Instead of only two places Parga and Karmala it is now four places, Parga, Karmala, Prevesa and Rapesa? A. Parga, Karmala, Prevesa and Rapesa.



352 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Why did you only mention Parga and Karmala?

A. It is the main place where the citrons are coming.

Q. I did not ask you that?

Mr. Fried: Yes, you did ask him that. You asked him why.

Q. Go ahead and state it? A. The main places are Parga and Karmala and Rapesa and Prevesa are smaller places. The main goods come from Parga and Karmala.

353 Q. Didn't you think it material when I asked you the places you bought these citrons from to tell all the places you bought them from?

Mr. Fried: I object to that as argumentative.

The Court: Objection overruled.

A. Well, it is only a small amount from Prevesa and Rapesa.

Q. How much from those two places? A. Maybe about 1,500.

Q. You thought it material to disclose it, that they also came from another place, Prevesa and Rapesa?

A. Yes.

Mr. Fried: I object to the question.

354 The Court: Objection sustained.

Q. You also testified that you bought a thousand when you arrived in New York a thousand citrons from a Greek? A. Yes.

Q. Do you know his name? A. Yes.

Q. What is his name? A. Kosius.

Q. You say you paid for it \$850 is that right? A. \$800 I paid for the merchandise and \$50 I paid commission to a man named Goldberg, his agent.

Q. Did you deal with an agent or with the Greek himself? A. First with the agent and then with the Greek

*Plaintiff's Witness, Sundel Saland, Cross*

355

Q. What is his name, the agent? A. J. Goldberg.

Q. Is he a citron dealer? A. No, he is a dealer with the Greeks, an olive dealer.

Q. Through him? A. He came over to me and notified me.

Q. You gave him \$50 and the Greek got \$800? A. Yes, \$800.

Q. Do you know what kind of citrons those were? A. Yes.

Q. How do you know? A. Because I know the shipper.

Q. You know the shipper? A. Yes.

356

Q. Who is the shipper? A. I know the man who shipped these goods, a man from Parga.

Q. You don't know whether this particular stock that you bought in New York was shipped by the shipper in Parga? A. Yes, I had a conversation with the shipper.

Q. Where? A. In Piraeus.

Q. Before you arrived here? A. Yes.

Q. What was the conversation? A. I wanted to buy his citrons and he did not want to sell them to me. He said, "I will send it myself to New York, I will get a better price for it." I offered him four francs, but he would not accept it.

357

Q. He refused to sell them to you? A. Yes.

Q. Is that all? A. Yes.

Q. How can you tell now under oath that because of this conversation you are ready and willing to swear under oath that this particular item of a thousand citrons that you bought from the Greek in New York came from Piraeus? A. I was on the same steamer and my goods and Mr. Cutler's goods and this Greek's goods, I saw on the manifest and the count of cases, and I know everything that is going on there.

Q. You know everything that is going on in Greece about citrons? A. Yes.

358 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Is that right? A. Yes.

Q. You know positively that this particular merchandise came from Piraeus? A. From Parga.

Q. Your information upon that subject is what you related? A. I did not get that.

Mr. Miller: I withdraw it.

Q. Could you tell when you bought this item of goods by anything that appeared upon it, any evidence to show upon the parcel where they came from? A. I know it is coming—

359 Q. No, not what you know? A. From Parga.

Mr. Miller: I move to strike that out as not responsive.

The Court: Motion granted.

Q. Could you tell when you bought this item of goods by anything that appeared upon it, any evidence to show upon the parcel where they came from? A. No.

Q. You also testified that you bought in New York 150 Palestine citrons? A. Yes.

Q. They came by mail? A. Yes.

Q. To somebody? A. Yes.

360 Q. Who was that somebody? A. I don't know the name but Mr. Chinsky bought them. I sent a working man.

Q. You did not buy it? A. I bought it through my man.

Q. You sent somebody to buy it? A. Yes.

Q. Is that man here in court? A. No.

Q. Then all you know is what the man told you? A. It was—

Q. All you know about this particular merchandise is what the man told you?

Mr. Fried: Object on the ground he tells him what he knows.

*Plaintiff's Witness, Sundel Saland, Cross* 361

The Court: Objection overruled.

By the Court:

Q. Is that all you know about it? A. It was coming by mail in boxes from Palestine.

Q. Did you see the mail? A. Yes.

Q. You saw it? A. Yes.

By Mr. Miller:

Q. To whom was the mail addressed? A. I don't remember. Maybe the witness will be here and he will testify.

Q. Where did you see the mail? A. It was every citron in a box from Palestine with a Turkish stamp on it.

Q. Where did you see that particular material on the box, in what place did you see it? A. On each box.

Q. This particular parcel that you say came from Palestine, you saw it addressed and marked on the parcel? A. Yes.

Q. Where did you go and in whose possession was that parcel when you saw that? A. In my possession in my store.

Q. The parcel came closed? A. Yes.

Q. You said you noticed on it? A. From Palestine.

Q. Anything else on it? A. Stamps.

Q. Any name on it? A. Yes.

Q. What is the name? A. I don't remember.

Q. It was not opened before you took it? A. I don't know if it was or not.

Q. In your testimony you said Palestine citrons were inferior and cost less than Greek citrons? A. Yes.

Q. Do you still stand by that? A. Yes.

Q. That is true? A. Yes.

362

363

364 *Plaintiff's Witness, Sundel Saland, Cross*

Q. That has been true all the way through? A. Yes.

Q. In 1914 did you sell to the Hebrew Publishing Company, the defendant here, Palestine citrons for \$1.50 and Triest citrons for \$1, did you, yes or no? A. Yes.

Q. How do you reconcile that fact with your testimony? A. I gave them without palms and without myrtle, only the citron alone for \$1. I gave the Palestine citrons including the sets for \$1.50 and then he bought additional Greek citrons alone without  
365 myrtles and without palms.

Q. Don't you know as a fact that you sold them complete in both instances? A. No.

Q. For \$1 as well as \$1.50? A. No, they had the palms themselves.

Q. What? A. I said no.

By the Court:

Q. Citrons are not eaten in the Feast of the Tabernacles? A. No.

Q. Does it make any difference in the quality except the sentiment? A. They always pay higher for the quality.

366 Q. They are merely symbolic? A. Yes, but green stuff, nice stuff, they are paying as high as \$5 and \$6 apiece.

Q. For the citron? A. For the citron alone.

By Mr. Miller:

Q. What is the minimum for a citron? A. It all depends on the market, how it is loaded with stuff. You could not sell it after the holidays only for preserves, a cent or two cents apiece.

Q. You testified the only difference in the market of the citrons was ten cents between 1914 and 1915? A. On the buying over there, but on the expense of sending them over here.

*Plaintiff's Witness, Sundel Saland, Cross*

367

Q. We have already had it that that included the expense so don't change that again.

Mr. Fried: I object and I ask that counsel ask for citrons alone without expense so as to avoid any argument, he does not refer to the net and the total of the citrons.

Mr. Miller: I withdraw the whole question.

Q. You testified this morning that the difference between 1914 and 1915 was about ten cents on the citron, which included the expense for a delivery in New York? A. I will explain to you—

368

Q. No, don't explain, did you so testify? A. Yes, but I have to give an explanation.

Q. You brought over 15,000 and you say you sold 9,000? A. Yes.

Q. There remained then in your possession the difference between 9,000 and 15,000? A. Where is the goods from Cutler.

Q. Out of the 15,000—are you also interested that Mr. Cutler should be paid for something? A. No.

Q. I am asking yourself? A. Yes, but I paid for his goods.

Q. Don't you remember that you testified yesterday that Mr. Cutler did not tell you that he did not care to reveal to you, how much he paid for his and you did not care to disclose and you tried to suppress the fact how much you paid for yours?

369

Mr. Fried: I object to this continually misquoting of testimony. I think it is done deliberately.

The Court: I don't think that is correctly quoted.

Q. Don't you remember you testified you did not tell Mr. Cutler how much you paid for yours and Mr.

370 *Plaintiff's Witness, Sundel Saland, Cross*

Cutler did not tell you how much he paid for his, do you remember that? A. Yes.

Q. Do you now say you paid for Cutler's? A. The amount that we agreed.

Q. What amount did you agree? A. A dollar a set, to put in the business, I had 15,000 citrons, I put it in \$15,000 and he had 5,000 citrons, he put it in \$5,000, and how it will be sold, there will be three parts for me and one part for Mr. Cutler and there will be a profit on this amount and we will divide accordingly.

371 Q. You were to divide the profits? A. Yes.

Q. How much were his profits to be? A. His share in the business.

Q. In proportion to his investment? A. Yes.

Q. Yours was \$15,000 and his was \$5,000? A. Yes, and we bought another thousand here.

Q. Out of that 15,000 you sold nine thousand? A. From the total amount.

Q. From the total amount you sold nine thousand? A. Yes.

By the Court:

Q. You mean a total of 21,200 you sold 9,100? A. Yes.

372

By Mr. Miller:

Q. Didn't I understand you yesterday to testify you sold 9,000? A. 9,114.

Q. And that you were left with 8,300? A. Yes.

Q. Is that correct? A. Yes.

By a Juror:

Q. You were left with 8,300 including the 1,000 citrons and Mr. Cutler's? A. Yes.

Q. That is also included? A. Yes.

By Mr. Miller:

Q. The thousand is also included in the 8,300? A. Yes.

By the Court:

Q. You only owned three-quarters of the 8,300? A. Yes.

Q. About \$4,000 got lost in the shuffle? A. We are always figuring fifteen per cent out for damages, fifteen out of a hundred for damages. For instance, you have the citrons here, you have to pick out the good ones, you could not sell the way they come, you have to pick out, if it is only broken a little bit, the point, then it is worthless and if it has a little hole, a little scratch you could not sell any more, so we have to pick out and sell only the good ones, so in this amount that I sold I had about fifteen hundred dollars loss on it, for damages, and the month that I stored I calculated also about one thousand five hundred that I had to allow for storage, so I figured only the net amount that are good for sale because 8,300 those were my figures on it. 374

Q. You said the eighty-three hundred you stored? A. Yes.

Q. With the Arctic Refrigerating Company? A. Yes. 375

Q. Where is that? A. 120 West Street.

Q. New York? A. Yes.

Q. When did you store that? A. On September 28th?

Q. 1915? A. 1915.

Q. Were the holidays still in existence at the time, were they still prevailing? A. It was at the end of the holidays.

Q. Are you sure it was the end, or was it during the holidays? A. No, it was the end of the holidays.



376 *Plaintiff's Witness, Sundel Saland, Cross*

By the Court:

Q. You do not mean it was after the end of the Feast of the Tabernacles? A. The Feast of the Tabernacles was on the 23rd, the first day and this was the 28th.

By Mr. Miller:

Q. You stored on the 28th? A. Yes.

Q. The Feast of the Tabernacles runs how many days do you know? A. Eight days.

377 Q. Why did you store the eighty-three hundred citrons during the holidays, during the Passover? A. I have to give the store back.

Q. Is that the reason? A. Yes, I had to put it away.

Q. You always do that every year when you give up your store, you put the balance of your goods in storage? A. No, sir; never.

Q. In this year 1915 you stored it because you wanted to vacate the premises? A. No, you asked me why I stored it in the holidays, otherwise I would wait a day after the holidays.

378 Q. I asked you why did you store it during the holidays and you said because you wanted to give up the store and you had to have the place, the store. A. You asked me the time why I stored it.

Q. Did I ask you why did you store these articles during the holidays and did you say because I want to give up the store and I want to have a place to store it, did you say so? A. Yes.

Q. Have you got a storage receipt to show you stored eighty-three hundred there? A. Yes.

Q. Have you got it with you? A. Yes, the counsel has it.

Q. Who is Mr. C. H. Widman? A. (Witness examines the paper produced by counsel and handed to him.) My brother-in-law.

Q. These citrons were yours? A. Yes.

Q. Why didn't you store them in your name? A. Because I wanted to go over to Europe and he has to go and visit the goods every month, so I put it in his name.

Q. Was Mr. Cutler in New York when you went to Europe your partner, who was interested in this deal, was he in New York at the time you stored it?

A. No, he was not.

Q. Where was he? A. I guess he went home.

Q. Where? A. I don't remember the day, after I was there, with him he went his way and I went my way. 380

By the Court:

Q. Where? A. Beverly, Boston.

By Mr. Miller:

Q. That is the reason you stored it in Mr. Widman's name? A. Yes.

Q. Was your agent here in New York, Mr. T. Goldberg, at that time? A. Yes.

Q. Why didn't you place it in his name? A. Because he paid no attention, Mr. Widman is my man working for me all the year through.

Q. You placed it in his name for that reason? A. Yes. 381

Q. In this receipt it says 73 boxes? A. Big ones.

Q. 236 small, that is all? A. Yes.

Q. What did you do with these several thousand that you have discussed, that you made allowances for. what did you do with them, did you sell them, those that you claim were damaged? A. No.

Q. What did you do with them? A. I gave them as presents to people.

Q. You disposed of about 4,000 as presents? A. No.

382      *Plaintiff's Witness, Sundel Saland, Cross*

Q. How many? A. About fifteen hundred or two thousand or something like that.

Q. That is thirty-seven hundred? A. Yes.

Q. You gave away as a present? A. Not all the 3,700 but the balance which I stored, I figured about fifteen hundred which I could not use for selling again out of the storage there.

Q. Out of the thirty-seven hundred how many hundred did you give away as a present? A. About seventeen or eighteen.

Q. To whom? A. Different people.

383. Q. Private people, business deal or what? A. Private people.

Q. All private? A. Yes.

Q. Do you know the names? A. Yes.

Q. Can you tell every name? A. No.

By the Court:

Q. Did you give them to seventeen hundred people?  
A. No, I gave to Mr. Bach something like 160, he took it to give presents to different people but the merchants who have to return the goods, they have to return the goods, so they did not return after the holidays, I counted over and saw so and so many  
384. were left and I did not take only for what they sold, and the balance was retained by them. I did not have any use for it.

By Mr. Miller:

Q. You know you could sell even though it was as preserves? A. Yes.

Q. You could get money for it? A. How much.

Q. You could get money for it? A. Yes.

Q. You say you disposed of seventeen hundred for nothing? A. Yes, it is only seventeen dollars.

Q. What is seventeen dollars? A. What I could get for it, only a cent apiece.

*Plaintiff's Witness, Sundel Saland, Cross*

385

Q. Do you mean to tell me all you could get for preserves is a cent apiece? A. Yes.

Q. Did you ever sell them for preserves in years gone by? A. Yes.

Q. How much? A. A cent and a half or two cents apiece.

Q. In this particular instance you did not try to sell them? A. No.

Q. What did you do with the others? A. Which?

Q. Out of the thirty-seven hundred you say seventeen hundred you gave away for nothing? A. It was the storage what I stored was 8,300, but I stored more than this amount, but I did not figure up in my losses more than 8,300 because the others I am figuring also has to be deducted, for damages, as well as the other damages. 386

Q. You say the additional two thousand which you do not account for you also stored in conjunction with the 8,300? A. Yes, I have to deduct it.

Mr. Fried: I object to that.

The Court: Objection overruled.

Q. You have counted out of the 3,700 for seventeen you gave away for nothing and the balance of 2,000, what did you do with those? A. They were stored together with the 8,300, but it was not separated from the whole balance. It was included in the balance so I should say there was stored 8,300, I should say there was over 10,300 but I have to figure 2,000 of it as damages as useless. 387

Q. How long did you have them in storage? A. About five or six months.

Q. Did you ever try to sell them? A. There is no sale for it.

Mr. Miller: I move to strike that out.

388. *Plaintiff's Witness, Sundel Saland, Cross.*

The Witness: No.

Q. You permitted this stock to rot away?

Mr. Fried: I object to that as not proper cross-examination. He has not testified so directly.

Mr. Miller: He says the stock became rotten and he could not use it.

The Court: Objection overruled.

Q. You permitted the whole stock of 10,300 citrons to rot away? A. Yes.

389. Q. Isn't it customary in your business for a considerable portion of the stock that you bring over, to store it and dispose of it as preserves after the holidays? A. No.

Q. Do you always sell every season the full amount of the stock that you bring over? A. Not always.

Q. In 1914 did anything remain? A. No, not with me.

Q. In 1913 did you sell the complete stock? A. Yes.

Q. In 1912? A. Maybe there remained the spoiled goods, those that were spoiled always remained over, I could not sell them, so every year there remained something.

390. Q. Don't you remember whether you did not sell any citron for preserves in the years 1914, 1913 and 1912? A. Maybe I did.

Q. Don't you remember that you sold quite a considerable stock? A. I don't remember.

Q. Isn't it usual to return citrons to you by customers? A. It all depends.

Q. You have testified on your direct-examination Rosenberg returned four and others returned as much as five, from one to fifteen, isn't this a matter of ordinary business every year, don't they return some to you? A. No.

Q. The merchants? A. No.

Q. If they find something that is not exactly perfect don't they return it? A. Sure I sell only perfect.

Q. Do you claim in this particular instance when Mr. Rosenberg returned to you four citrons that this was not an ordinary transaction? A. No, it was on account of the paper.

Q. You say that? A. Yes, but I have the letters from him. I had letters from him that he had sent it back on account of the paper.

Q. Have you got the papers? A. I don't know that I have. 392

By Mr. Fried:

Q. Look these over—we have some—look these over and see if there are any there? A. (Witness examines the papers handed him by counsel.) No.

By Mr. Miller:

Q. Have you got the letter which was referred to in one of your telegrams which was introduced in evidence yesterday from Springfield? A. I had a letter.

Q. You remember in one of the telegrams introduced in evidence, the merchant who returned the goods says, "Letter follows." A. Yes. 393

Q. Where is that letter? A. The counsel has it.

Mr. Fried: Here is one letter.

Mr. Miller: I would like to suspend the cross-examination of this witness and call a witness out of order.

394. *Defendant's Witness, Bernard Drochman, Direct*

BERNARD DROCHMAN, being first duly affirmed, testifies as follows, as a witness in behalf of the defendant:

*Direct-examination by Mr. Miller:*

Q. You are connected with what Hebrew institution? A. I am one of the rabbis of the congregation O'Hara Saragnick and a rabbi of the congregation Ephram on 67th Street, besides being the president of various Jewish associations.

395: Q. Doctor, I ask you to look at this article and see whether you have been a signatory to a proclamation that appears there? A. (Witness examines the paper handed him by counsel.) That is correct.

Q. I ask you to look at this translation of that same proclamation that appears there in Hebrew and tell us whether it is correct? A. (Witness examines the paper handed him by counsel.) It is an almost exact translation.

Q. Doctor, do you know whether or not there was a ban on citrons coming from Greece? A. Well, as I signed this, this is evidence of it.

396: Q. The jury would not know what you signed and therefore we have got to get your testimony? A. There certainly was and is.

Q. And is today and has been since when? A. I should judge twenty-five years.

By the Court:

Q. On all coming from Greece? A. Well, some explanation is needed in here. This is a question which cannot be answered by a simple yes or no. It is necessary to give a little explanation so to speak, a little lecture on it, if I may be permitted. Is that permitted, Judge?

The Court: If there is no objection.

*Defendant's Witness, Bernard Drochman, Direct* 397

Mr. Miller: I have no objection. Just explain in your own way.

The Witness: Well, previous to the riots and persecutions of the Jews in Korfu about twenty-five or twenty-six years ago, I forget the precise date, there was not to my knowledge any direct prohibition of the use of citrons from Greece or from Korfu. At the same time religious people objected even then to using them, for the reason that the citrons which come from those regions are not sure to have been grown and prepared in the proper manner. This is a Biblical commandment, in regard to the observance of the Feast of the Tabernacles, and four species of plants and fruits are ordained to be used in that manner, being the citron, the myrtle, the willow and the palm, and all four being required to be taken together during the services in the synagogue, or in the home, sometimes, the services of the Passover of Tabernacles. 398

As I was saying, among religious people, religious representatives did not use them, even then, because there was a suspicion that the growers or planters had grafted them with other species of lemons or other plants which are not commanded by the Bible, and they abstained from using them.

However, there was not a direct prohibition and a great many people used them because they are very fine in appearance, they look better than others, and at that time also Palestine was very slightly cultivated by Jewish people and there were practically no, or very few citrons raised in Palestine. 399

However in that year this terrible persecution took place and the indignation of the Jewish people was very strongly aroused and they came together, a number of distinguished rabbis, and other Jewish leaders, and they said it certainly is not right that we should use these citrons, they are not only suspicion of being



400     *Defendant's Witness, Bernard Drochman, Direct*

not quite proper, according to the law, but they are raised by people who are enemies of the Jews and shedding their blood and persecuting them and we directly assist persecutors and bigots and enemies of religious liberty, and the Jews, by purchasing these things, so therefore there was action taken, the rabbis prohibited the use of them, or if they did not absolutely prohibit them, they issued a warning, a written request to religious Jews not to use them. It was looked upon as an absolute prohibition, and accepted as such by the Jews.

401     That report came to America in the name of one of the greatest rabbis in the world, at that time living, and at that time the very great rabbi, Jacob Joseph was living here in this country, and he was the chief rabbi of I think eighteen congregations in New York City, and recognized all over the country as chief rabbi, and he also felt and also the very distinguished Dr. Phillip Klein, who is present here today, and I think some others felt that the same language should be announced and made clear in America for the American Jews.

402     They requested me to co-operate with them in making that announcement and we made that announcement and as you see in the text there, the motive was purely a religious and sentimental one for the reasons already given. That is about the facts.

By the Court:

Q. Doctor, that still does not answer the question, whether the ban is against Korfu citrons only or against all Greek citrons? A. It states against all Greek citrons and in general it is against entire Greece without any distinction, because the view taken was that it means to make a precise distinction, if you say Korfu alone, then the region of Korfu may be a very small one, and from around the corner they will

*Defendant's Witness, Bernard Drochman, Direct* 403

bring others with a different name and thereby deceive people and therefore the language states that the ban or prohibition, or the earnest admonition is not to use them, and it applies to all the citrons which come from that region where these objections obtained, and then furthermore the motive that the Holy Land which is after all the sacred place to all Jews, and all believers, shall be preferred and the citrons which grow there are not only on sentimental grounds as being originated in the holy ground, preferably, but they are also free from the other objections that I mentioned.

By Mr. Miller :

404

Q. Dr. Brill, who has been a witness on the stand yesterday, I take it you have been in court? A. Yes, I was here.

Q. The plaintiff has called Dr. Brill and he has testified that the lulof, the Hebrew word lulof is translated into English cedar, is that so? A. That is not correct.

Q. What is a lulof, if you translate that into English, how can it be translated and what is it? A. I would say a palm branch or a palm bough.

Q. You know what a cedar is? A. Certainly.

Q. Cedar is mere wood? A. Cedar is known in Hebrew as one of the cedars of Lebanon, it is a timber tree. 405

Q. It has no connection at all with a lulof? A. Not the slightest.

By the Court :

Q. Has it any with a citron? A. Not the slightest.

By Mr. Miller :

Q. It appeared yesterday from the testimony of Dr. Brill that he did not know whether there was such

406     *Defendant's Witness, Bernard Drochman, Direct*

a word in Hebrew as nevola. Is there such a word?

A. Certainly.

Q. What is the definition of nevola? A. Nevola means a vile action or vile deed, a reprehensible or abominal deed.

Q. In reading this article—

The Court: Mr. Brill stated there was no such word in Yiddish? There is a difference I hope between Yiddish and Hebrew.

407     Q. Is there any such word in Yiddish? A. The word nevola very customarily used by people who speak Yiddish.

Q. There is also a distinction between nevola and nevala? A. There certainly is.

Q. Nevala means what? A. Nevala means really the dead body of an animal that has died of itself, a carcas.

Q. When you read this Yiddish article in conjunction with the context there, do you notice the word nevola there? (No response by the witness.)

By the Court:

408     Q. Is that word nevola or nevala? A. Yes, I see this passage.

By Mr. Miller:

Q. Is it nevola? A. It certainly is nevola.

Q. And not nevala? A. Nevala would be quite out of place.

By the Court:

Q. How is it printed? A. The printing is exactly the same when unpunctuated.

Q. That is punctuated there? A. This is unpunctuated.

*Defendant's Witness, Bernard Drochman, Cross*

409

By Mr. Miller:

Q. This is nevala? A. Yes.

Q. Nevala means a dead body? A. Nevala means a dead body.

Q. Nevala means a dead body? A. Yes.

Q. And nevala means an an abominal thing or a contemptable thing? A. Yes.

The Court: It comes down to exactly the same thing, doesn't it?

Mr. Miller: I want to show that the doctor that translated it—

410

The Court: He translated it as a foul thing.

Mr. Miller: He has got the wrong Yiddish word and he was the expert produced. I offer in evidence the translation given by the doctor.

Mr. Fried: I think the book should be offered in evidence.

The Court: Yes, offer it in evidence.

Mr. Fried: I would like to ask a few questions with reference to this article.

The Court: Yes, you may.

*CROSS-EXAMINATION by Mr. Fried:*

411

Q. Who is this man Binart. A. He is a distinguished Hebrew scholar.

Q. He is not a rabbi? A. He is not a rabbi.

Q. He has nothing to do with the ritual work of the Jewish church? A. He has the same right as any layman.

Q. He has no right to pass on any ritual matter? A. He cannot proclaim a ritual decision.

Q. It would require a gentleman who had occupied a position of rabbi in the Jewish synagogue and whose reputation has been established as a learned man? A. Actually a qualified rabbi.

412      *Defendant's Witness, Bernard Drochman, Cross*

Q. Has this man any authority to issue a ban?

A. This man has not declared anything in regard to the matter. This man has not declared any ban. This man has simply collated decisions and statements by qualified rabbis.

Q. If you should submit the article of Mr. Binart to any of the orthodox rabbis either here or any part of Europe would they accept his statement as authority of what is prohibited and what is banned and what is not? A. Mr. Binart makes no such statement.

413      Q. This is simply an opinion by a layman? A. He does not express any opinion.

Q. What is this article? A. Mr. Binart himself felt very warmly on the question of the citrons of Greece. Mr. Binart as I said is a distinguished Hebrew scholar. He is also a very warm and earnest Jew and particularly a great lover of the Holy Land. When this outrage and terrible persecutions of the Jews in Greece took place—

Q. I want to get a few questions and answers if you don't mind. I want to get the meaning of certain things that we have to present. Isn't it a fact that Mr. Binart was an enthusiastic Zionist? A. Yes.

414      Q. And this is a plea practically that the Holy Land be patronized by the Jewish people? A. Well, largely so.

Q. Would this article guide the orthodox rabbis? A. Mr. Binart says nothing in his own name, he only presents and collates the opinions of representative rabbis.

Q. You know of the Basa Frine? A. I personally have not seen it.

Q. Would you consider the encyclopedia, the Jewish encyclopedia a well informed book? A. Generally.

*Defendant's Witness, Bernard Drochman, Cross* 415

Q. As a general compilation. A. Yes.

Q. Did I understand you to say that the citrons in Greece were under some sort of condemnation because they were not pure? A. Yes.

Q. Isn't the reverse the fact, are not you mistaken about that? A. No.

Q. Isn't it a fact that the citrons in Palestine have been at times under the ban on account of their imperfect condition, do you know of that? A. No, I do not know of that.

Q. Do you know that as a matter of fact the pure goods are in Greece? A. I have read the very reverse. 416

Q. Isn't it a fact that in Europe Rabbi Spector, of Kovno, isn't it a fact that he placed a ban against the Korfu citrons? A. I have read so, yes.

Q. Isn't it a fact that another sect of rabbis, overwhelmingly contested it and said there should be no ban against Greek citrons? A. There is a difference of opinion prevalent, yes, that is a fact.

Q. Are you aware of the fact that in the past twenty years every orthodox rabbi in New York and all over the world has been using citrons from Piraeus, Prevesa and Karmala and Parga outside of Korfu? A. I know that I personally ever since this riot took place for a quarter of a century have insisted on Palestine citrons and never used any others to my knowledge. I may have been deceived, but to my knowledge I never used any citrons except those of the Holy Land. 417

Q. Is there anything in the Din outside of this little book or anywhere outside of this book that would condemn the Greek citrons outside of Korfu?

Mr. Miller: I object to that on the ground we are not trying here what the Talmud says, we are trying whether there was such a ban and Dr. Klein was one of the signatories and Dr. Dorchman and Rabbi Jacob Joseph.

418. *Defendant's Witness, Bernard Drochman, Cross*

The Court: Objection overruled.

Q. Doctor, I read you the following paragraph in the Jewish Encyclopedia, "In modern times and especially since the anti-Jewish demonstration in 1891 at Korfu, a movement was inaugurated to boycott the esrog and buy citrons raised in the Palestine. Isaac Elchonen, Spector." (No response by the witness.)

By the Court:

Q. Is that the Rabbi Isaac Elchanin? A. Yes.

419 By Mr. Fried:

Q. He favored the Palestine fruit while other contended that the esrogim of Palestine being raised on grafted trees were prohibited. Does not the Jewish Encyclopedia say exactly the reverse of your contention? A. No, it does not. If you will permit me I will explain why it does not. The first thing is here there is an old Jewish saying to the effect that Jewish votes are not counted but weighed, in other words the weight of authority is more than mere numbers. Number is value, but weight of authority is more. A decree of decision by a rabbi like Rabbi Elchonen Spector is more than that of ten thousand other rabbis.

420. I only know of one or two others who even reach near to him in standing, and in Talmudic erudition and learning in the Jewish world, but he was known as a man of gentle nature and not inclined to prohibit things. If he prohibited, that prohibition is more than the permission in my opinion of ten thousand other rabbis and I can say this now, not as a matter of rabbinical decision but as a matter of observation of Jewish phenomena, that this prohibition on Greek citrons and this preference to the Palestine ones met with practically universal popular recognition. The people felt that that was—

*Defendant's Witness, Bernard Drochman, Cross* 421

Mr. Fried: Pardon me, Doctor, you are not answering.

The Witness: I do not deny that certain rabbis have held other views because we all admit this, that in itself the citron is not permitted or prohibited because it is grown in one particular place. There is, it is true, a passage in the Bible which according to my view—

The Court: There is just one specific question, Doctor.

The Witness: It contains the expression "Citrons of the Island of Greece."

422

By Mr. Fried:

Q. Would you condemn anyone for using the Greek citrons personally? A. I personally would, yes.

Q. You would? A. Yes.

Q. If I were to tell you, suppose if I were to tell you that my father and a hundred other orthodox rabbis are every year using Greek citrons and prefer that, would you condemn them then? A. Yes, positively.

Mr. Miller: I offer in evidence this translation.

Mr. Fried: I object to as simply being the circular. Dr. Drochman stated on the witness stand that it is not authoritative, that it is a ritual question and should be decided by competent rabbis. I object to this circular going into evidence.

423

Mr. Miller: It is not a circular. It is a translation of the very proclamation that the doctor testified to.

The Court: Objection overruled.

Mr. Fried: Exception.

Mr. Miller: I ask to have this translation marked in evidence now.



424 *Defendant's Witness, Phillip Klein, Direct, Cross*

Received in evidence and marked Defendant's Exhibit D.

PHILLIP KLEIN, called as a witness for the defendant, being first duly sworn, testifies as follows (through the official interpreter):

*Direct-examination by Mr. Miller:*

Q. Where do you reside? A. 137 West 109th Street.

425 Q. What is your calling or profession? A. Rabbi.

Q. What synagogue are you connected with? A. First Hungarian congregation Ohaf Zedek.

Q. Have you been a signatory to the proclamation in Hebraic, particularly in this book which I have shown you? A. Yes, sir. This is more than twenty years old.

By the Court:

Q. Do you remember how that proclamation was distributed and published? A. These were the so-called Zion brethren, they wanted to do this for the purpose of supporting the colonists in Palestine, that the people should purchase these citrons from Palestine and not from other localities.

426 Q. How was that proclamation particularly distributed and published—how was it given out? A. In Jewish periodicals and also in pamphlets.

*CROSS-EXAMINATION by Mr. Fried:*

Q. Doctor, outside of the reasons that you have already stated is there any other reason why citrons from any other country are prohibited or are under the ban? A. Yes.

*Defendant's Witness, Phillip Klein, Re-direct*

427

Q. On the inability to obtain Palestine citrons would anyone be condemned for using citrons from Greece outside of Korfu?

Mr. Miller: I object to that on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Miller: Exception.

A. When one cannot obtain any from Palestine one can take others.

Mr. Fried: That is all.

428

*RE-DIRECT EXAMINATION by Mr. Miller:*

Q. This proclamation that you joined in, you said this is the advice, that they shall not take any esrog if they are not sure that it is the product of the Holy Land, the Land of our Fathers, we shall thus be free from any doubt whatsoever and shall perform the command of our Holy Law, saying, "And ye shall take unto yourselves of your own land, the land of your fathers—"

Mr. Fried: He has signed that and I do not think it is necessary to repeat.

429

The Court: I don't see what is the use of going into that.

Mr. Miller: I withdraw it.

(Mr. Miller then reads Defendant's Exhibit B to the jury.)

430

*Plaintiff's Witness, Sundel Saland, Cross*

SUNDEL SALAND, the plaintiff, resuming, testifies as follows:

*Cross-examination resumed by Mr. Miller:*

Q. Did you see any article appearing in Jewish publications, issues or papers on the same day that this advertisement of the defendant corporation appeared? A. Not the first day.

Q. You know that the libelous article that you complained of appeared on September, 1915, on the 15th? A. No, it was on the 14th.

431

Q. Well, which is it? A. In the Wahrheit?

Q. I am not speaking of the Wahrheit, I am speaking of the Jewish Morning Journal? A. That was on the 15th.

Q. In the same paper on September 15th, 1915, where these Hebrew Publishing Company articles appeared, which you say is libelous against you, did you also see another article concerning esrogim? A. May I see it?

Q. Look at this? A. Let me have the whole paper.

Q. No, look at this, please? A. Yes.

(Witness examines the paper handed him by counsel.)

432

Q. You saw that? A. Yes.

Q. Did you read it? A. Yes.

Q. Don't you know whether or not your cancellation on some of the orders which you testified to came to you with knowledge of the fact that it was because of this announcement? A. No.

Q. In the same paper on the same day? A. No.

Q. That they cancelled your orders? A. No.

Q. Is the letter here? A. No.

Q. Could you locate the letter in which the explanation is made? A. It was an account of the Hebrew Publishing Company's article in the Morning Journal.

Q. Isn't it a matter of fact and haven't you been told that a lot of your orders have been cancelled after these customers have read also other announcements that appeared on the same day concerning the use of esrogim? A. This did not harm me so much.

Q. It harmed you to some extent? A. I did not feel it much. I will tell you the reason why.

Q. Yes? A. Because here the rabbi says they should not make any blessing of it but they could not take out the instructions from the Bible not to use it, so they had to use it, but they should not bless on it, so it means they should buy it but not bless on it. 434

Q. Did not it harm you when so many rabbis, about twenty rabbis, distinctly cautioned the Jewish Public not to buy any citrons other than Palestine and pronounce no blessing on any other citrons except a Palestine? A. They did not say that.

Q. Did it harm you when these rabbis said not to pronounce any benediction on any citron but a Palestine citron? A. They did not say it.

Mr. Fried: I object to that line of testimony unless they show to what kind of citrons they refer.

The Court: I don't know what you are asking me to rule on. 435

By Juror No. 10:

Q. What kind of citrons were those which you sold the defendant prior to the publication of this libelous article, you say you sold to the extent of \$800? A. From Palestine and Greece.

Q. From Palestine and Greece? A. Yes.

Q. Both? A. Yes.

Q. Did he ask you whether they were all from Palestine or partly? A. In 1914?

Q. This last bill which you sold him? A. It was 1914, but this time it was difficult, we had a very

436 *Plaintiff's Witness, Sundel Saland, Cross*

small amount of Greek citrons, we had mostly Palestine citrons, so I sold him the citrons that came the last days before the holidays, when he sends to me, I shall send him up as much as possible, so I send up one hundred or one hundred and fifty, I don't remember how much it was.

Q. One hundred Palestine citrons? A. No, one hundred Greek citrons.

By the Court:

Q. Did you tell him you were sending Greek cit-  
437 rons? A. He asked me for Greek citrons.

By Mr. Miller:

Q. In 1914, did not you sell him 1,200 Palestine citrons? A. Yes, I don't remember how many it was.

Mr. Fried: I don't know whether the jury understood the witness or whether the witness understood the jury. There was a check offered here, dated October 6th, 1915, for \$80.

The Court: Were you referring to those Mr. Jurman?

The Jurman: To those, yes, in October, 1915, the check which was produced yesterday.

438 By the Court:

Q. Tell us what citrons those covered? A. Those were Greek citrons.

Q. Did you tell them they were Greek citrons? A. Yes.

By Mr. Miller:

Q. Did you have esrogim in 1914, Greek esrogim?  
A. Yes.

Q. You had advertised and informed the Jewish public what kind of esrogim you had, did you? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

439

Q. Did you tell them or did you inform them that your stock consisted of esrogim from Greece? A. No.

Q. Did you so announce? A. No.

Q. Did you announce to the contrary, that your esrogim came from Palestine? A. In 1914.

Q. Yes? A. Yes, I did.

Q. Although you had esrogim from Greece? A. No, I did not have at this time that I advertised.

Q. Did you announce in the year 1914, in order to advise the Jewish public of the fact you had esrogim from Greece? A. No.

440

Mr. Fried: I object to that answer.

The Court: Objection overruled.

Q. Did you announce during the same year you had only Palestine esrogim? A. The beginning of the season I advertised only Palestine because I did not have any others.

Q. At no time did you announce you had Greek esrogim for sale? A. All kinds.

Q. Look at this?

(Witness examines the paper handed him by counsel.)

441

A. As I told you, only Palestine.

Q. Did you want to fool them? A. No.

Mr. Fried: I object.

The Court: No, let him bring out the facts.

Q. Did you want to keep them in the dark as to what kind of esrogim you had for sale? A. No.

The Court: What is the date of that advertisement in 1914?

Mr. Miller: September 24th, 1914.

442 *Plaintiff's Witness, Sundel Saland, Cross*

Juror No. 9: If your Honor please, are the words esrogim and citron synonymous?

The Court: Yes, the same thing. Esrogim and citrons are exactly the same.

By Mr. Miller:

Q. In 1912, did you have Greek citrons for sale?

A. I don't think so.

Q. Don't you remember you testified yourself that you had Greek and Palestine citrons? A. 1912, no Greek citrons. It was one year that there were no  
443 Greek citrons to be gotten, I had that year one hundred or one hundred and fifty Greek citrons.

Q. What year? A. 1912 or 1910, I don't remember which, one of the previous years there was no Greek citrons to be gotten.

Q. You don't remember whether it was 1910? A. I don't remember 1910 or 1912 or 1911, I don't remember which, but one year it was only Palestine citrons, it was no other, and I had a good many inquiries and some people did not bless on account they did not have Greek citrons, some offered me \$10 a citron for Greek citrons if I could get it, but I could not get it.

444 Mr. Miller: I move to strike that out that they offered him \$10.

The Court: Strike out the whole answer.

Q. Do you know whether any one else besides the Hebrew Publishing Company had made any comment in any newspaper in 1915, about the esrogim that you had for sale? A. No, I don't remember any.

Q. Don't you remember the Wahrheit and the Day had quite a number of articles about the Greek esrogim and cautioning the public about not buying it? A. The first thing I guess was from the Hebrew Publishing Company.

Q. On the same day when the Hebrew Publishing Company's article appeared in the same journal there also appeared another one on the very same paper? A. What, I did not see it.

Q. You did not see it, didn't you see this on the same day in the Morning Journal, September 15th, 1915, in the same paper? A. You asked me before this question.

Q. Did it also appear in the Wahrheit and the Day, articles of the same character? A. I don't remember whether it was or not. Show me the article.

Q. You say that on August 29th, after you arrived here you went up to see somebody connected with the Hebrew Publishing Company concerning the purchase of citrons from you? A. Yes.

Q. You spoke to whom? A. To Mr. Werbelowsky and Mr. Dogan.

Q. What did you say to either one of these gentlemen? A. That I had the citrons what he needs and I will be able to supply him and he asked me what kind of citrons have you this year, I told him, "You know the circumstances, I have only Greek citrons," so they asked me, "What is the prices." I told them, "I could not give any prices yet because I did not figure it out with the bills yet and second I don't know the condition when it arrives. So we will have to wait another couple of days and I will be able to let you know." He says, "We have to answer our customers in the country." I says, "You do the same way I do. I write all my customers I will supply their orders and let them know the price in a week or so."

Q. Isn't it a matter of fact that they gave you an order for Palestine citrons before you left this country? A. They gave me an order—

Q. Yes or no? A. Yes.

Q. Isn't it a matter of fact that they have exclusively asked you to bring for them Palestine citrons only? A. No.



448

*Plaintiff's Witness, Sundel Saland, Cross*

Q. Did they give you any other than Palestine?

A. Greek citrons are still better, they said.

Q. Did they give you any other order but Palestine citrons before you left this country? A. Palestine and Greek.

Q. How much of Palestine did they order and how much of Greek? A. It is only a matter at the time of what I would be able to get of Palestine citrons, it is very difficult, and if I get any it is very small and they said what Palestine you have we will have and the balance Greek citrons.

449

Q. Did they tell you the number you were supposed to bring for them? A. No, no number at all.

By Juror No. 10:

Q. Did you agree on a price for the citrons when you took their order? A. No.

By the Court:

Q. Did you agree on any arrangement as to how you were to order them? A. No, that before I furnished the goods I would have to make the price with them because in 1914 we had some argument.

450

Q. What did you say to them and what did they say to you before you went to Europe? A. They said they would need ten or twelve esrogim and I shall purchase it for them.

Q. Did they say anything about a commission to you? A. Nothing whatever.

By Mr. Miller:

Q. In addition you testified they said you should bring these esrogim both Palestine and Greece? A. Whatever I should have.

Q. They ordered both Palestine and Greece? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

451

Q. In 1914, they gave you an order, too? A. Yes.

Q. How was that order? A. Palestine and Greece.

Q. How many Palestine and how many Greece?

A. I have my order book here.

Q. Was it 1,200 Palestine citron? A. I will see in the book. Here I have the order 800 Palestine citrons and 200 Greek citrons.

Q. I show you this bill, is that your signature to it (indicating)? A. Yes.

Q. Do you see on the same bill that you signed 829 citrons, Palestine? A. Yes.

Q. I will leave out the palms 75, citrons Palestine 26, citrons Palestine 25, citrons Palestine— A. I did not have any others than Palestine. 452

Q. I didn't ask you that?

Mr. Fried: I object to reading part of the bill unless the bill is offered in evidence.

Mr. Miller: I offer in evidence the bill.

Mr. Fried: No objection.

Received in evidence and marked Defendant's Exhibit E.

The Court: Is there on that bill anything about Greek citrons?

Mr. Miller: I will ask him. 453

Q. Other than the numbers I have read off to you about Palestine and 40 citrons Triest— A. Triest, that is Greek citrons.

Q. Did you mean in this bill that you have sold them Greek citrons? A. It is always under the name Triest, Triest that means Greek.

Q. Don't you make a distinction when you say in court the citrons you had came from Parga, Karmala, Rapesa and Prevesa? And here you put on the bill 40 only from Triest? A. From Triest.

Q. Don't you know also that Triest is a market for Palestine? A. No, the market for Palestine is in Palestine.

454 *Plaintiff's Witness, Sundel Saland, Cross*

Q. Don't they sell in Triest the Palestine citrons?

A. Yes, but not a market.

Q. Don't they sell them there? A. Yes, and they sell them here, too. And always the citrons we call Triest citrons are Greek citrons.

Q. The Palestine citrons were ordered before you left this country? A. And the Greek citrons—

Q. You said only 800 citrons in all were placed for Palestine? A. I said 800 Palestine.

Q. I have read 829 of Palestine, 75 Palestine, 26 Palestine, 25 Palestine?

455 Mr. Fried: That is not a correct statement on the bill.

Q. That appears on this bill that I have read off, these numbers of Palestine citrons, do they not? A. Yes.

Q. And only 40 Triest citrons on the whole bill? A. Yes.

Q. Isn't it a matter of fact that you first got the order exclusively for Palestine citrons and when you landed here you got an additional order for 43 Triest citrons? A. I have the original order here.

Q. I am asking you? A. No.

456 Q. You got at the same time both orders for Palestine and Triest citrons? A. Yes.

Q. Have you ever given a bill or any paper to the Hebrew Publishing Company showing that citrons you sold came from Parga, Karmalo, Prevesa and Rapesa? A. Under the name Triest.

Mr. Miller: I move to strike that out.

The Court: I will let it stand.

Q. Did you ever put Greek citrons on any bill in order to apprise them that they came from Greece?

A. I don't remember that.

Q. Did you say yesterday that you had 150 citrons in 1915, which you bought through this mail transaction? A. Yes.

Q. And that you could not dispose of them? A. Not all.

Q. You said you disposed of how many? A. 75 or 80, 50, I don't remember how much.

Q. And the balance you could not dispose of at all? A. No.

Q. Why? A. They don't want to buy it.

Q. The people don't want to buy any Palestine citrons? A. No, because the Greek citrons were nicer. 458

Q. You mean to tell the jury the Jewish public refused to buy Palestine citrons and preferred Greek citrons, that is the reason why they refused to buy Palestine citrons? A. They were not nice.

By the Court:

Q. They did not buy Palestine citrons because they liked the Greek citrons; then why did not you sell them your 8,000 Greek citrons which were left over? A. If a man comes to buy a citron he wants them perfect and nice. The Palestine citrons came by mail and they looked very bad, they said if you have a nice Palestine citron I will buy it but this is not nice, he won't buy, and the man who did not care for this publication buys Greek citron and the man who cares for the publication he does not buy any. 459

Recess to two o'clock.

460 *Plaintiff's Witness, Sundel Saland, Cross*

Afternoon session.

SUNDEL SALAND, the plaintiff, resuming, testified as follows:

*Cross-examination resumed by Mr. Miller:*

Q. You spoke yesterday of an alleged partner, or a suggestion made to you of some members of the Hebrew Publishing Company in regard to the citrons in question? A. Yes.

461 Q. Tell us this conversation that took place between you and either or any of these members by which you spell out this alleged offer of partnership? A. It was Mr. Werbelowsky.

Q. What day? A. September 5.

Q. That is the day following the first conversation that you testified to? A. The second.

Q. Where was the conversation held? A. In the chamber room over there in the office, right where you come out from the elevator.

Q. Who else was there besides Mr. Werbelowsky? A. Mr. Chinsky.

Q. About what time of the day was it? A. I guess it was before noon.

462 Q. What day of the week, if you remember? A. Sunday.

Q. Sunday? A. Yes.

Q. What did you say to Mr. Werbelowsky? A. I said to Mr. Werbelowsky that I am in a position "to let you know the prices on the citrons," he said, "Well, what is it." I told him that, "After I figure up all the expenses and see the goods and the palms came in a very bad condition, so I have to purchase some other palms from California, and all of them, I am not able to sell my goods the cheapest ones less than \$3 and the higher grade goes for \$4, but I will make

these people an exceptional price and give them the high grade goods for \$3."

Q. And the inferior grade, the other grade, how much? A. No, I did not talk of the lower grade because I told him I could not sell any cheaper than \$3, but I will give him the higher grade for \$3.

Q. That included also a fulof you say? A. Yes.

Q. What did Mr. Werbelowsky say to that? A. He said that he could not pay this price and he wants we should give him a lower cost, and I should figure out the lower cost which it cost me and a small commission it or take him in the partnership in the business and then we shall go hand in hand and make money on it and otherwise if you did not want to do it I will go out in an advertising campaign against you. and I will see that you remain with all your stock."

464

Q. Anything else? A. So I made another proposition and I told him that I will guarantee him he will make a thousand dollars profits on his order.

Q. How much was his order? A. About 1,200.

Q. You wanted to guarantee him that on 1,200 citrons he would make a thousand dollars? A. A thousand dollars.

Q. That was your offer of guarantee? A. Yes.

Q. Go ahead? A. And if he don't want it he shall act for me as an agent and I will pay him half a dollar from every set, and this way, so he don't have to risk anything on it.

465

Q. What did he say? A. Nothing doing, only the way he told me before, if I want to accept it, it is all right, otherwise he will do the way he says.

Q. What did he offer to do? A. He offered I should give him cost price with small commission on it. I told him if I shall figure out cost price and the commission on it may be it will be dearer yet, but I did not want to give him any figures, that is my price, I want to sell him.

Q. Did you tell him that if you had put it into figures that it would be still more? A. It might cost more, but I did not want to put it into figures.

Q. You did not want to show him the figures? A. I did not want to show.

Q. Wasn't there any understanding at any time how much you were to charge them for citrons upon orders given to you? A. In 1913, we have it.

Q. How much? A. Ten cents or fifteen cents, I don't remember, commission on every set.

Q. On the cost price? A. Yes.

467 Q. Was there any understanding in 1912? A. I guess it was.

Q. In 1914? A. I don't think so.

Q. You don't remember? A. No, it was not.

Q. In 1915, there was no understanding as to how much you were to charge them, is that right? A. Yes.

Q. After this conversation that you have had that you related you left the office? A. Yes.

Q. This was on a Sunday you say, what date? A. On Sunday.

Q. Do you know the date? A. Yes.

Q. What date? A. September 5.

468 Q. This was in the morning or in the afternoon? A. I guess it was before noon.

Q. Did you see him again? A. I saw his employees.

Q. Did you see him? A. His employee.

Q. Did you see Mr. Werbelowsky? A. I met him once on the street but not about this.

Q. You did not discuss anything? A. No.

Q. Did you after September 5, offer any esrogim to him? A. That was the time I had the conversation with him.

Q. After that? A. Not direct to him.

Q. You testified you did sell them something like \$80 worth? A. \$90 worth, thirty sets.

Q. \$90? A. He did not pay him in full.

Q. I refer to the check? A. That was \$80.

Q. \$80 worth of citrons? A. Yes.

Q. Which were you say Greece citrons? A. Yes.

Q. You say you told him then they were Greek citrons? A. Yes.

Q. And that you had been in the habit of always telling the Hebrew Publishing Company what kind of citrons you offered to them for sale? A. Sure.

Q. Who did you speak to concerning this \$80 worth of citrons? A. Mr. Dogan was over in my store. 470

Q. It is with him you had this particular transaction? A. Yes.

Q. Was this after the alleged libelous article appeared in the newspapers that you made this sale? A. I guess it was on the 13th.

Q. This check for \$80 even and not \$80 and change, as you say is dated October 6th, 1915. Was that the time you sold these? A. No.

Q. How long before this date? A. I sold them September 13th.

Q. 1915? A. 1915.

Q. How do you know it was September 13th? A. I have a bill here. 471

Q. You have got a bill? A. Yes.

Q. That you rendered? A. Yes.

Q. To the Hebrew Publishing Company? A. Yes.

Q. You gave them a bill? A. Yes.

Q. The bill that you have with you, where is it? A. The counsel has it.

Q. It was the day after this date that you say, September 13th, that the libelous articles that you complain of first appeared? A. Yes.

Q. In one paper, if you remember, and on the following day, the 15th, in some other paper? A. Yes.



472

*Plaintiff's Witness, Sundel Saland, Cross*

Q. How much of a stock had been in your possession or was left with you after September 15th unsold? A. I don't remember.

Q. How much did you sell of the entire stock after September 14th and September 15th, 1915? A. I could not give any figures, I don't remember that.

Q. Have you any records? A. There must be some records in the books.

Q. Do you know? A. No.

Q. You mean you cannot remember? A. I could not remember.

473

Q. Do you know whether or not you have it recorded or entered what you sold after September 14th and September 15th, 1915? A. September 13th and 14th and 15th was early in the season, and we usually—

Q. I didn't ask you that? I asked you had you made entries in any books showing sales that you made after September 14th and September 15th, 1915? A. Yes.

Q. You have such entries made? A. Yes.

Q. Where are the books? A. Here.

Q. Could you locate these sales? A. Yes.

(Witness examines his book.)

474

A. Starting from September 6th?

Q. No, I asked you after the 15th, take the 14th and 15th and thereafter? A. The 14th, Volensky, 20; Finkelstein, 5; Hamberger, 30; Perkin, 16.

Q. Can you state without mentioning the parties in particular, just the bulk, how much in all? A. I could not figure it up.

Q. Then it is 36, it don't mention any name?

Mr. Fried: I would suggest that the names of the customers whom he sold be left out and that the amounts alone be stated.

*Plaintiff's Witness, Sundel Saland, Cross*

475

Mr. Miller: I now insist upon the names as well.

The Court: Objection overruled. State the names.

Mr. Fried: Exception.

The Witness: Rabbi Ingeldel, 41; Sadorsky, 25; Mr. Goldman, 25; Rabbi Laskia, 31; Mr. Jacobs, 48; Mr. Drickerman, 100; Rabbi Friedman, 45; Rabbi Uhro Chleive, 48; Mr. Bach, 15; Rabbi Taylor, 12; Mintz, 5; Rabbi Rapaport, 27.

By the Court:

476

Q. On what date did he buy? A. On the 14th. Mr. Friedman, 15; Dwitsohn, 6; Fultzman, 100; Rabbi Rapaport again, 10; he bought for his brother; Rabbi Kavalsky, 15; Rabbi Galut, 20; Mr. M. Goldberg, 25; Rabbi Friedman, Boston, 50; Mr. Valozen, 15; F. I. Persin, Rabbi, 20; Rabbi Hirshenten, 30; Rabbi Levenberg, 25; Rabbi Kaladisky, 15; Rabbi Begel, 15; Rabbi Harnowitz, 20; Rabbi Selig, 25; Rosenberg, Paterson, 25; Levine, 25; Swerenetsky, 18; Rabbi Posen, 30; Mr. Rosen, New Haven, 20; Mr. Levine, Palestine citrons, 3. September 15th, Mr. Gleik, 15; Shapiro, 5; Silversen, Washington, 85; Rabbi Weishlatt, 102; Mr. Bach, 90; Mr. Friedman, Chicago, 20; Pollock, 34; Levine, 175; Mr. Weiss, 10; Rabbi Gallobotsky, 35; Shanowitz, 35; Joseph Telie, 16; Koenigsberg, 3; Utelevitz, 14; Rabbi Prieil, 15; Mr. Shenowitz, 32; Rabbi Cohen, 7; Mr. Drickerman, 2 Palestine; Rabbi Ronowitz, 5; Rabbi Reuben, 46; Rabbi, Hirschenvensohn, 6. September 16th, Rabbi Eisman, 5; Rabbi Sherechfsky, 23; Mr. Tiktin, Cleveland, 10; Rabbi Shohead, Portland, Maine, 33; Mr. Green, 10; Rabbi Katchen, 15; Rabbi Ulwoon, 16; Rabbi Luebnstein, 36; Friedman, 1; Rabbi Frank,

477

478 *Plaintiff's Witness, Sundel Saland, Cross*

42; Senator Levy, 5; Rabbi Laschowitz, 15; Rabbi Katlan, Rochester, 20; Mr. Sperber, 30; Rabbi Zack, 20; Mr. Lomber, 12; Mr. Yarnefsky, 100; Rabbi Silver, 2; Mr. Scenowitz, 6; Mr. Merchbie, 2; Mr. Barnett, 46; Mr. Kubloch, 50; Mr. Scheddenicsky, 50; 1 single; Mr. Baubernic—

Q. Is that the total you have sold? A. Yes.

Q. Take it up to September 14th; your books show 3011 and 83 more would be 3094 sold previous to September 14th. How many does it show altogether? A. 9814. Before I said 9100, I was in error.

479 By Juror No. 10:

Q. When did the holidays commence? A. On the 23rd.

By the Court:

Q. Do you mean on the evening of the 23rd? A. The evening of the 22nd.

By Juror No. 10:

Q. How much did you sell after the holidays? A. Nothing.

Q. After the 23rd? A. Could not sell any more.

480 By the Court:

Q. Did you ever sell any after the beginning of the holidays? A. No, only for preserves.

Q. Do I understand that citrons are not used for any holiday except the Tabernacle? A. Yes, that is all.

Q. Isn't it a custom for some orthodox Jews to take citrons with cloves to the synagogue on the day of Atonement? A. No, it is not.

By Juror No. 9:

Q. You stated in 1915, you had some 8,000 citrons left over? A. Yes.

*Plaintiff's Witness, Sundel Saland, Cross*

481

Q. How many did you have left over in 1914?

A. None.

Q. Were they all sold for religious purposes? A. All sold for religious purposes, besides a little that was damaged. The damaged ones I could not sell but I have to pick them out. I have to sell them picked out, perfect stock.

Q. You had no left overs that you sold for preserving purposes? A. No, only those that are spoiled, but if it is a scratch on it then we cannot sell it for the religious purposes, so that we have to put it aside.

Q. That is what you call your damaged ones, and they comprise about 25 per cent? A. About 15. 482

By the Court:

Q. Mr. Saland, how long does a citron usually remain in good condition? A. As far as I know you could keep them about two or three months.

Q. What was the purpose in storing the citrons? A. I wanted to try out because I had paid very expensive for these citrons and it cost me a whole lot of money and I wanted to try putting them in storage, may be they would last over the next season, that was my idea. I want to try out and in about four months it was in very fine condition and the fifth month I come over and I saw they are all rotten, so I have to dump them. 483

By Mr. Miller:

Q. In answer to the juror you said none were left over in 1914, but such that were damaged? A. With me.

Q. Don't you know as a fact you sold in 1914, citrons untouched and unopened in the boxes complete to the Hebrew Publishing Company after the holidays? A. It was not mine.

484

*Plaintiff's Witness, Sundel Saland, Cross*

Q. Did you sell them? A. It was not mine.

Q. Did you sell them, yes or no? A. No.

By the Court:

Q. You sold none? A. Oh, yes, I remember it.

Q. Did you sell any in unopened boxes after the holidays in 1914, to the Hebrew Publishing Company?

A. Yes, but—

By Mr. Miller:

485

Q. So that you were not correct in answering to the juror's question? A. I would not admit it, counsellor.

Q. In answer to the juror's question that the only thing left over was the damaged ones, the usual fifteen per cent? A. Yes.

Q. You were not correct when you told the jury that? A. I was.

Q. You were? A. Yes.

Q. In face of what you said that you sold goods that were perfect and untouched and unopened? A. Yes.

Q. You still insist both were correct? A. Yes, sure.

486

Q. After this libelous article appeared in these newspapers from your figures that you testified to, you had sold in proportion daily much more than you had sold prior thereto before the libelous article appeared? A. That is what I said, I would give you the answer on it.

Q. I asked you in proportion you sold daily more citrons after this libelous article appeared than you did prior to the appearance of the libelous article? A. If the figures show, of course I did.

Q. You testified that you sold in 1914, to the Hebrew Publishing Company the complete set of citron, a lulof for \$1.40? A. No, I did not.

Q. How much? A. \$1.75.

Q. Didn't you testify in the morning session that you got \$1.50, which was ten per cent commission and \$1.40 net? A. I sold them for \$1.75 and then comes to collect my bill and they did not want to pay me.

Q. Did you testify in the morning session you had sold, in 1914, to the Hebrew Publishing Company, a complete set for \$1.50 which was \$1.40, a ten per cent commission? A. That is what I got paid.

Q. You gave a bill for that? A. No.

Q. Look at Exhibit E again and tell us whether that does not show that all you got was this amount? 488  
A. That is what I say I got, but I did not sell for that price. I sold for \$1.75 and they did not want to pay it, so we had arbitration, we had people sitting arbitration between us and that is what I get paid.

Q. In 1915, outside of the Hebrew Publishing Company how much did you get for citrons in the market complete? A. In 1915?

Q. Yes? A. Three dollars and up.

Q. Most of them were up? A. I don't know how many, but I had for three dollars for four dollars and for five dollars.

Q. Were there any numbers of the 21,000 you had were most of them offered for sale by you for more 489  
than three dollars apiece? A. I could not offer any more for sale after the article went in the papers.

Mr. Miller: I move to strike that out.

The Court: Motion granted.

Q. Didn't you understand the question I put to you?  
A. No.

Q. You do not? A. No.

Q. You are very careful in putting that libelous article in all the time?

The Court: Don't argue with him.

490

*Plaintiff's Witness, Sundel Saland, Cross*

Q. Can you tell us out of the 21,000 including the lulavim, the complete set, did you sell more at prices higher than \$3? A. No.

Q. The majority you sold for less? A. The majority for \$3.

Q. Have you any idea out of the 21,000 how much you sold for three? A. No.

Q. Did you sell as much as \$5 a set? A. Yes.

Q. You have testified that the difference in bringing it over to this country between 1914 and 1915 was ten cents?

491

Mr. Fried: I object to that as already having been testified to three or four times.

The Court: Objection overruled.

A. To bring them over was the price on the—

Q. To bring them over and into this country? A. The price at the place where I paid it—

Q. You testified several times that the difference was ten cents was to bring it over to New York? A. No, I did not. No. I testified I paid there ten cents more than other years.

By the Court:

492

Q. Do you know what the rate of exchange was in 1915? A. I bought gold and I paid \$4.80 for French 20 franc piece.

Q. 1915? A. In 1915.

Q. You mean you paid these people in gold out there? A. I had gold.

Q. Did you pay them in gold? A. Yes, some part and I give my checks.

Q. Do you mean that five francs were worth one a dollar in 1915? A. Gold francs.

Q. Did you pay for this in gold or other money? A. In other money.

Q. I want to know what the rate of exchange was in 1915? A. I guess it was about 19 1/2.

Q. How did it compare with 1914? A. It was dearer than 1914. In 1914 I did not buy these goods in Greece. In 1914 I bought these goods in Palestine and part of them in Triest.

Q. You said you paid about— A. Two and one half cronen in Triest.

Q. What I want to know is how did a cronen in 1914 compare with the price of francs in 1915? A. The cronen was less than the franc.

Q. Less than the francs were in 1915? A. Yes. 494

By Mr. Miller:

Q. You say two and one-half cronens? A. In 1914.

Q. For a set? A. No, for a citron alone.

Q. Did that include the delivery of it to New York? A. No, at the place.

Q. What place? A. Triest.

Q. Did that include delivery in New York? A. No.

Q. How much freight was on it do you know? A. I don't know.

Q. How much did the freight cost to bring it here? A. I don't remember. 495

Q. Do you know anything about freight in normal conditions, how much was your freight? A. I figure in, it all depends on where it is coming from, which port.

Q. Take Triest? A. Triest is higher, the prices, than when it comes from Palestine.

Q. Why don't you tell us the amount? A. We figure in five cents or four cents or five cents for a citron, expense.

Q. Four or five cents for a citron? A. Bringing them over in this country.



By the Court:

Q. Is there any duty? A. No.

By Mr. Miller:

Q. Can you tell us the difference between 1914 and 1915, for the purchase of citrons in Greece? A. The prices you mean?

Q. Yes? A. In 1914, I paid two and one-half cronen for the first-class goods, the very best.

Q. From Greece? A. Yes, and in 1915 I paid for the higher grade three francs and I had for the common ones, I paid two francs.

Q. Two for the common? A. And three for the good ones.

Q. Were they the best? A. They were the good ones, good quality, not the best, you could not get the best.

Q. Those were the best you could buy? A. Those were the best I could buy under the original goods.

Q. Those were the best you could get that year? A. I would not say it.

Q. Could you get better ones? A. Sure.

Q. In Greece? A. Yes.

Q. You did not buy them? A. I was not able to buy them.

Q. So the good ones you paid three francs? A. Three francs.

Q. And the common ones two and one half? A. Two and two and one-half.

Q. How much was three francs in United States money in 1915? A. Sixty cents.

Q. That was in 1915? A. Yes.

Q. The same citrons in 1914, how much did you pay? A. Two and one-half.

Q. Two and one-half francs? A. Two and one-half cronen, less than francs.

Q. How much in United States money? A. I could not remember what was the rate at that time, around eighteen cents a cronen.

Q. Is it fifty cents? A. Three times eighteen.

Q. The difference was between fifty-four and sixty. It was fifteen cents difference, about fifteen cents difference on a citron? A. Yes.

Q. Do you say this included the freight charges? A. No, without the freight charges.

Q. What was the freight charges then? A. If I can remember it—I could not say about.

Q. Were they practically or substantially the same? 500  
A. I could not say.

Q. You could not say? A. No.

Q. Your trip in 1914 and 1915, was not any more expensive, was it, except that you chose to go by a better steamer coming back? A. I had about the same expense, maybe a little more in 1914.

Q. Your expenses in 1914 were still a little more? A. A little more.

Q. Were these cost prices that you keep in mind, you sold in 1914, a complete set or offered for sale a complete set? A. For \$1.75.

Q. In 1915, the minimum was \$3 and you went up as much as five dollars? A. Yes. 501

By Juror No. 9:

Q. Is there any difference between the make up of the sets that cost that price, to raise from three to five dollars, were they the same quality or a different? A. No, a high grade quality, if it is perfect, you have to pay more, in ten thousand citrons you may find a hundred very fine ones.

By Mr. Miller:

Q. You testified that the \$1.75 ones that you sold were good? A. Original goods.

502

*Plaintiff's Witness, Sundel Saland, Cross*

Q. Original goods and good quality of citron? A. Originally good quality.

Q. For which you charged the highest, \$1.75? A. Yes.

Q. In 1915, with the difference as you testified, the expenses of going over the same, you went up to between three and five dollars? A. Three dollars.

Q. Three the minimum? A. Yes.

Q. And you got as much as five dollars? A. For the perfect goods.

Q. The same style? A. The same price of goods in 1914 and 1912, \$5 for the good ones.

Q. Take for instance \$4 a citron? A. Original goods I sold for \$3 and the exceptionally good ones I sold for \$5. In normal years you sell a good citron for \$5 and sometimes more yet.

Q. But you say now the ordinary citron— A. \$3.

Q. The common one in 1914, \$1.75, and in 1915, \$3? A. No, I don't say common ones, good original, you have to be an expert in this business.

Q. The good ones \$1.75, and the next year \$3? A. \$3.

Q. Did you read an article on September 14th, 1915, in the Wahrheit, the very day this alleged libelous article of the defendant corporation appeared in the same paper? A. I will have to see it.

Q. Look at it? A. (Witness examines the paper handed him by counsel.) Yes, I did.

Q. You saw that on the same date? A. Yes.

Mr. Miller: I ask to have this marked for identification.

Paper marked Defendant's Exhibit F for identification.

*Plaintiff's Witness, Sundel Saland, Cross*

505

Q. I want to correct the word article to an editorial? A. I don't think it was an editorial. It was a paid article.

Q. Look at it and see if it is not an editorial? A. They put it in in the shape of an editorial but the Hebrew Publishing Company paid for it.

Mr. Miller: I move to strike that out.

The Court: Motion granted.

Q. Tell us what is this, a paid publication an editorial or an advertisement? A. I could not say. You will have to ask the Wahrheit.

506

Q. On September 23rd, 1915, did you also read an article in the Day concerning the citrons that were offered for sale during that time? A. Yes, I did.

Mr. Miller: I ask to have this marked for identification.

Paper marked Defendant's Exhibit G for identification.

Q. Are you familiar with these articles I have just asked you about? A. I don't understand it.

Q. When you read these articles, when they appeared, you understood? A. Yes.

Q. Would you say now that these articles did not in any way tend to hurt your business? 507

Mr. Fried: Object to that on the ground he is not the proper person to say that. It is speculative.

The Court: Objection overruled.

Mr. Fried: Exception.

A. On which particular one do you mean?

By the Court:

Q. Either of those articles, did they hurt your business? A. They hit, yes, they did.

508

*Plaintiff's Witness, Sundel Saland, Cross*

By Mr. Miller:

Q. Did you ever see the article in the Jewish World of September 14th, 1915, of Cleveland, Ohio, concerning the citrons that were offered for sale by you and others? A. No, I did not.

Q. You never saw that before? A. No.

509

Mr. Miller: I offer in evidence the article of the Wahrheit of September 14, 1915, which I have shown the witness and he testified he read it on that day, and to the contents and he said that article did hurt his business.

The Court: Are you offering the original?

Mr. Miller: I am offering the Yiddish. It is already marked for identification Defendant's Exhibit F.

Mr. Fried: I object on the ground that it is incompetent, irrelevant and immaterial and not in any way affecting this case.

The Court: Objection overruled.

Mr. Fried: Exception.

Received in evidence and marked Defendant's Exhibit F.

510

Mr. Miller: I also offer in evidence Defendant's Exhibit G for identification.

Mr. Fried: I object on the ground it is incompetent.

The Court: That was not before the first day of the holidays.

Mr. Miller: I withdraw it.

Q. You said that you knew all the citron dealers in New York City in 1915? A. Yes.

Q. You have mentioned a number of names yesterday? A. Yes.

Q. You have not mentioned, however, one Kazen-  
elinbouden, who dealt at that time in citrons in New

York City? A. I don't remember if he bought or not.

Q. You have also not mentioned Shaberinsky? A. They are not a New York man.

Q. Throughout the country you have tried to mention persons' names? A. No, I only give you the names of New York dealers.

Q. Don't you remember you were asked whether you can tell of your own knowledge that nobody else but you and your partner Cutler, in 1915, had for sale citrons, and you tried to convey the idea that you two were the only ones? A. Yes.

512

Q. Do you say now that that was only applying to New York City? A. No.

Q. Throughout the United States? A. Yes.

Q. Were there such a man as Shaberinsky? A. Yes, he bought citrons.

Q. Were not there other persons throughout the United States, others than those you have mentioned of New York City? A. Yes.

Q. That you did not mention there every name? A. That I did not mention?

Q. Those you have mentioned were only a few of the citron dealers? A. That came to my mind.

Q. There was also Mr. Schlunger, in New York City, you did not mention him? A. There are a good many I did not mention.

513

Q. Even in New York City? A. Yes.

Q. All those were engaged in citrons? A. All, they bought of me, citrons.

Q. Those that you did not even mention have also been engaged in citrons in the year 1915? A. Yes, they all bought of me.

Mr. Miller: I move to strike it out.

The Court: Motion granted.

Mr. Miller: That is all.

514 *Plaintiff's Witness, Gabriel W. Margolies, Direct*

*RE-DIRECT EXAMINATION by Mr. Fried:*

Q. You have been asked about the statement or the bill from the dealer Athanassoulis? A. Yes.

Q. Is this the statement you got in 1915?

(Witness examines the paper handed him by counsel.)

A. Yes.

Mr. Fried: I offer this in evidence.

515 Mr. Miller: I object on the ground that is not any stronger proof than his own.

Mr. Fried: They have asked for the bill.

By the Court:

Q. You received that from your commissioner in Athens? A. Yes.

Q. You paid that? A. Yes.

The Court: Objection overruled.

Mr. Miller: Exception.

516 GABRIEL WOLFF MARGOLIES, called as a witness by the plaintiff, being first duly affirmed, through the official interpreter, testifies as follows:

*Direct-examination by Mr. Fried (through interpreter):*

Q. Where do you reside? A. 203 East Broadway.

Q. What is your profession? A. Rabbi.

Q. Were you a rabbi in Russia? A. Yes, sir.

Q. For what city? A. Grodno.

Q. How long were you Rabbi of Grodno? A. Thirty-seven years.

Q. Then you came to this country? A. I received a call from Grodno.

*Plaintiff's Witness, Gabriel W. Margolies, Direct* 517

Q. Where are you rabbi at the present time? A. In New York.

Q. Have you also been dealing in citrons in Russia? A. Yes, sir.

Q. Isn't it the custom in Russia and all over Europe for the rabbis to deal in citrons? A. Not all.

Q. Is there any prohibition against the citrons of Greece outside of Korfu? A. From Greece and from Palestine, they are all available, all useful, but there must not be mixed together, lemons with the citrons. Where there has been grafting of lemons and citrons together, those are not acceptable. 518

Q. In any land? A. Not at all.

Q. Did you know Rabbi Spector of Kovno? A. I myself have been at his place. I have a signature by his—

Mr. Miller: I object to that.

The Court: Strike it out.

Q. You got your license to practice from the Rabbi from Kovno? A. Yes.

Q. Did you have a conversation with him with regard to Greek citrons?

Mr. Miller: I object.

The Court: Sustained. 519

Q. Can you show any authority from any book showing that the citrons of Greece are not prohibited?

A. When they are simply pure citrons they can be used, but if they are from Palestine, citrons and lemons grafted, then they are not available.

Q. That is the only prohibition? A. When they are grafted together then they are not acceptable; otherwise they may be.

By the Court:

Q. Are the citrons in Greece grafted on lemons?

A. One does not know that.



520 *Plaintiff's Witness, Gabriel W. Margolies, Direct*

By Mr. Fried:

Q. In Palestine do they know about it? A. Where there is a suspicion that there has been grafting of the two together, they are not acceptable, but when not, then they are taken.

By the Court:

Q. Is there any suspicion as to the citrons being grafted on lemons in Palestine? A. When they are grafted together, then they are, likewise, they are trefoh, but when the product of the grafting of lemons and citrons is grafted together with citron, then it does not make any difference any more, as I said before, they are kosher, the grafting of the citrons with the product of the combined citron and lemon, that is acceptable, but not the first product from the citron and the lemon.

521

By Mr. Fried:

Q. That is the only distinction? A. Yes.

By the Court:

Q. Except as to Korfu?

Mr. Miller: No, he includes even Korfu.

522

A. Korfu, Palestine and everything is all one.

By Mr. Fried:

Q. Will you look at the book and show us; what is that book? A. It is a commentary on Jewish religion.

By the Court:

Q. How old is that book; when was it published; when was it written? A. It may have been a hundred years ago.

*Plaintiff's Witness, Gabriel W. Margolies, Cross*

523

By Mr. Fried:

Q. Did you speak to any other Rabbis in Russia after you spoke to Rabbi Spector?

Mr. Miller: I object.

The Court: Objection sustained.

Q. What has been the custom amongst the orthodox Jews in Russia after you spoke to Rabbi Spector, after the Korfu trouble? A. It was in the year 1874.

Mr. Miller: I object.

The Court: Objection sustained.

524

By the Court:

Q. We want to know after 1891. (No response from the witness.)

Q. How long have you been in this country? A. Ten years.

Q. When did you see Rabbi Spector last? A. Rabbi Spector died a long time before.

*CROSS-EXAMINATION by Mr. Miller:*

Q. Mr. Saland, the plaintiff in this action, is your son-in-law? A. Yes, sir.

525

Q. And Mr. T. Goldberg who has been mentioned in this trial is also a son-in-law of yours? A. Yes, sir.

Q. You said that Korfu citrons have not been prohibited, the use of them, by the Jewish public; they never have been prohibited so far as you know? A. The cause of this trouble here was something that happened in the year 1874 or 1873, at the time when I was dealing in these things.

Q. I asked you as far as you know, you say that Korfu citrons have not been prohibited, nor has there been a ban on even Korfu citrons, other than those that are grafted together with lemons? A. Yes, sir.

526 *Plaintiff's Witness, Gabriel W. Margolies, Cross*

Q. That is all? A. There was also a riot in Korfu.

Q. Don't you know in 1891 there had been some anti-Jewish demonstration at Korfu? A. I don't know that.

Q. You never heard of it? A. Yes, there was what we call a riot or a pogrom a year or two before that; it was in 1891.

Q. Don't you know that since those anti-Jewish demonstrations in 1891 in Korfu, the rabbis got together and issued a proclamation placing a ban on Korfu citrons? A. I don't know that.

527 Q. You never heard that? A. No.

Q. Did you ever read a copy of Exhibit D, page 47, ending on page 49 of the book, which is marked Exhibit D in conjunction with the translation? A. No.

Q. In 1891 or 1892 were you a rabbi connected with any synagogue in Russia? A. Yes.

Q. With what congregation were you connected? A. In Grodno.

Q. Did you know at that time, Chief Rabbi, Jacob Joseph? A. No.

The Court: He was the chief rabbi in New York.

528 Q. Did you ever hear of a rabbi named Jacob Joseph in New York? A. I knew him from Vilner.

Q. You knew him while he was in Vilner, Russia? A. Yes.

Q. What was he there? A. A chief rabbi in Vilner.

Q. You consider him a great authority, do you not? A. Yes, sir.

Q. If you saw his signature to this proclamation would you still insist upon it that there was no ban on citrons growing at Korfu? A. How can I know that that is his signature?

*Plaintiff's Witness, Gabriel W. Margolies, Cross*

529

Q. If I am telling you now that is his signature, will you change your testimony? A. There is no Joseph there. He was named there in that place, Jacob Joseph, but here there is the name Joseph, and that is not his signature.

Q. Assuming that this is Rabbi Jacob Joseph's signatory to this proclamation, would you change your testimony as to there having been a ban on citrons growing at Korfu? A. I won't accept that that is his. What do I know about that? If this had been written, I should have recognized it.

Q. Would you recognize it as the final if you had been advised that that is his signature to this proclamation? A. Certainly. 530

Q. Would you also change your testimony with regard to the entire country of Greece if you are told that within the same ban came not only Korfu, but entire Greece? A. I have not yet heard the opinion that he has expressed.

Mr. Fried: He says—

Mr. Miller: I object to that.

The Court: Do you object on the ground that the interpreter did not interpret correctly?

Mr. Fried: I do not object.

The Court: Do you state that he did not? 531

Mr. Fried: Yes.

The Court: Put the question again.

Mr. Fried: I claim he said he would not follow it if Rabbi Joseph had prohibited it.

The Court: No, that is not what he said.

The interpreter translated it correctly.

Q. Rabbi Jacob Joseph placed a ban on citrons coming from Greece; if you were told that, would you follow it? A. I don't know what you are asking me. What are you asking me?

532 *Plaintiff's Witness, Gabriel W. Margolies, Cross*

Q. Would you follow the instructions of Rabbi Jacob Joseph upon this question? A. What question? What do you mean?

Q. Assume that Rabbi Jacob Joseph, the chief rabbi, placed a ban upon all citrons from Greece, would you follow that? A. No.

Q. Would you follow it as to Korfu? A. No, sir.

Q. Did not you say a minute ago, as to the Korfu citrons, when I asked you, that you would follow his instructions?

533 Mr. Fried: I object on the ground he never said it.

The Court: Then we will ask him.

Q. Did not you say a minute ago, as to the Korfu citrons, when I asked you, that you would follow his instructions? A. No.

Q. Do you consider Dr. Drochman an authority? A. No.

Q. Do you consider Dr. Klein in any way as an authority? A. No, sir.

Q. Do you consider yourself an authority? A. Well, it is the public that has to judge of that, not I.

534 Q. You testified that you received your license from Rabbi Isaac Elchanin; is that right? A. Yes.

Q. Would you consider him an authority upon these questions? A. Yes, sir.

Q. If I am to tell you that Rabbi Isaac Elchanin joined in this ban, would you then change your mind and your testimony? A. He said he had only been doing this in Kovno; he said that to me, and he said that one cannot follow him in all cities.

Mr. Miller: I move to strike that out.

The Court: Motion denied.

Q. You still do not answer whether you would follow Rabbi Isaac Elchanin?

*Plaintiff's Witness, Gabriel W. Margolies, Cross*

535

Mr. Fried: I object on the ground he has already answered he would follow him; he has answered that, yes.

The Court: Objection overruled.

Q. We still do not receive any answer upon the question put to you, whether you would follow the instructions of Rabbi Elchanin if he joined in this interdiction of Greece citrons as well as Korfu citrons?

A. There was not one only, but there were others: there were Zilner, Warsaw and Minsk and Grodno, and they all used—

536

By the Court:

Q. Do you know whether Rabbi Isaac Elchanin forbid its use in Kovno? A. As I am telling you, he said to me here, here in Kovno, and this is the order I gave in Kovno, I am not for all Russia there, and Russia is not responsible and is not bound to follow me everywhere.

Q. Do you know whether he gave that order in Kovno? A. I told you that and I myself heard that from him.

Q. When he gave that order in Kovno, he meant that it was wrong to use it anywhere in Russia, didn't he? A. No more than in Kovno.

537

Q. Did the rabbi hold that something was trefoh and kosher somewhere else? A. Whoever wished to follow him as far as his order in Kovno was following him and those who did not wish to follow him did not follow him.

Q. You did not wish to follow him? A. I wanted to follow him, but I was dealing with Palestine.

Q. Did you follow him? A. Well, there were two rabbis there in Kovno; one said that one should follow him and one said that one should not.

538 *Plaintiff's Witness, Gebriel W. Marg. lies, Cross*

Q. In Grodno did you follow him? A. I wanted to deliver Palestine citrons; I had a commission from Palestine.

Q. Did you tell your congregation that it was right to use anything except Palestine citrons? A. Only Palestine citrons were to be used, but other synagogues did not follow that.

By Juror No. 10:

Q. Did it make any difference to you what kind of a citron you used, Palestine or Korfu citrons? A. 539 I favored the Palestine citrons, but it did not follow from that that one was more kosher than the other only those were not kosher, then those which had come from the grafting of the citron to the lemon.

By Mr. Miller:

Q. You testified, however, that you yourself advised your congregation to use Palestine citrons? A. Yes, sir.

By the Court:

Q. Did you tell your congregation that it was wrong to use any other kind? A. Well, I said that when 540 there were any Palestine citrons there, then one must not use the Korfu citrons.

By Mr. Miller:

Q. Didn't you advise your congregation by no means, in any event, not to use any Korfu citrons?

Mr. Fried: I object to that as already having been answered five times.

The Court: Objection overruled. I will allow this one question.

A. No, sir. When there are no Palestine citrons there they then one must take the Korfu citrons.

*Plaintiff's Witness, Gabriel W. Margolies, Cross*

541

Q. Didn't you know that since 1891 that there were no Korfu citrons, there were none produced?

Mr. Fried: I object to that as already having been gone over.

The Court: Objection overruled.

Mr. Fried: Exception.

A. What do I know what there is over there?

By Juror No. 10:

Q. Did you consider it sacrilegious to use any other citrons except the Palestine citrons? A. Well, they had persuaded the people that the Palestine ones were all right, but that the others were not, but then afterward they came and it was accepted that the others were also all right, except those that had been produced by graft of the citron and the lemon.

542

By Mr. Miller:

Q. Are you in any way interested in the result of this case by your son-in-law? A. I am not an interested party in this.

Q. Are you interested to any extent so as to favor your son-in-law?

Mr. Fried: I object.

543

The Court: Sustained.

Q. Did you know of a number of rabbis congregating in 1915, and after consultation issuing another proclamation or a declaration to the Jewish communities not to pronounce any benediction or blessing upon citrons other than Palestine? A. I was at no such meeting.

Q. Did you hear of any such a thing?

Mr. Fried: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.



544 *Plaintiff's Witness, Gabriel W. Margolies, Cross*

A. It was in the paper.

Q. Did you read it? A. Yes, sir.

Q. Did you know that such a thing appeared in the "Jewish Morning Journal" on September 15th, 1915?

Mr. Fried: Object to that as not proper cross-examination.

The Court: Objection overruled.

Mr. Fried: Exception.

A. I saw it, yes.

545 Q. Did you read that in that proclamation that there have joined Rabbi M. S. Margolies, president of the Orthodox Rabbis of the United States, Rabbi Jaffre, Rabbi Dr. Hiller—

Mr. Fried: I object on the ground it does not say that citrons outside of Korfu are prohibited, and there is no proof that what he sold are Korfu citrons.

The Court: Objection overruled.

Mr. Fried: Exception.

Q. And twenty other rabbis? A. Twenty-one.

546 Mr. Fried: I object to the contents of this paper as the paper itself is the best evidence.

The Court: Objection overruled.

Mr. Fried: Exception.

Q. You know that there were twenty-one rabbis joined in that? A. I did not count them.

Q. Do you agree that these rabbis, twenty-one in number, have announced that no benediction should be pronounced upon any citron other than a Palestine citron—

Mr. Fried: I object to reading from any article or any paper unless that paper is in evidence.

*Plaintiff's Witness, Gabriel W. Marg. lies, Cross*

547

The Court: It is in evidence, only we have not the translation.

Q. What do you say? A. No, sir.

Q. Do you think that you are a greater authority upon that subject than those orthodox rabbis?

Mr. Fried: I object.

Mr. Miller: Question withdrawn.

Q. Did you try to help out your son-in-law after this declaration had appeared in the "Morning Journal" of September 15th by some sort of an answer to it?

548

Mr. Fried: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Fried: Exception.

A. Yes, there was also Cutler was another dealer in citrons.

Q. Is this your handwriting?

(Witness examines paper handed him by counsel.)

A. Yes, that is my own handwriting; the whole of that is.

549

Q. Did you write this in answer to the declaration that appeared in the "New York Morning Journal" on September 15th, 1915, in which those twenty odd rabbis joined? A. I said that what they were doing in this matter that was null and void.

Q. You said so? A. Yes.

By Mr. Fried:

Q. Isn't it a fact that some of the rabbis that first issued the prohibition afterward retracted it and signed a paper permitting the sale of the citrons, for

550 *Plaintiff's Witness, Samuel Buchler, Direct*

instance, Rabbi Jaffre? A. That is in the papers there. There is no need of your asking me.

---

SAMUEL BUCHLER, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

*Direct-examination by Mr. Fried:*

551 Q. You are a rabbi of what congregation? A. Congregation of Beth Hula.

Q. Where is that? A. 904 Bedford Avenue.

Q. Are you the chaplain of one of the institutions? A. Yes. I am the Hebrew chaplain of Sing Sing Prison.

Q. Are you familiar with the controversy over the citrons? A. I am.

Q. Were you here this morning when we read the Jewish Encyclopedia? A. I am sorry I was not here.

Q. Amongst the Jewish people is there any prohibition against the Greek citrons outside of Korfu? A. I knew a few years ago some rabbis have prohibited the esrog coming from Korfu.

552 Q. Is there any prohibition against any other places outside of Korfu? A. Not that I know of.

Q. Are you familiar with the matter? A. I am.

Q. What kind of citron do you use in your congregation? A. When there were no Palestine citrons, we have used citrons coming from Korfu.

Q. You pronounced prayers and benedictions over Greek citrons the same as a Palestine citron? A. Yes.

Q. You prefer Palestine Esrogim for sentimental reasons? A. For religious reasons.

Q. Do you know whether there is any aversion on the part of the Jewish public in using Greek citrons outside of Korfu? A. Absolutely none.

*Plaintiff's Witness, Samuel Buchler, Direct*

553

Q. They look on the Palestine citrons the same as on the others? A. I think they do.

Q. Are you familiar with the prohibition which those rabbis signed which counselor is speaking about?

A. I am.

Q. Did you hear of Rabbi Jaffre? A. I heard of it.

Q. Isn't it a fact that he retracted the prohibition which he had signed?

Mr. Miller: I object.

The Court: Sustained.

554

Q. I show you a paper. Is Rabbi Jaffre's name on this?

Mr. Miller: I object to the question unless the witness is familiar with Rabbi Jaffre's signature.

A. I am. I know him very well.

Q. Is Rabbi Jaffre's name on this? A. Yes, I find it here.

Q. Is that an announcement that they can be used and the citrons can come from Korfu? A. I did not read it yet.

Mr. Miller: I object.

The Court: Sustained.

555

Q. Would you recognize Rabbi Margolies who preceded you, as an authority on ritual matters? A. I do recognize him.

Q. Is he one of the old, orthodox rabbis of this city, well known? A. I believe for extremely orthodox Jews he is an authority.

Q. Would not you consider on extreme ritual matters, isn't he and Dr. Klein greater authorities than Dr. Drockman on strictly orthodox ritual matters? A. I do not consider Dr. Drockman authority on orthodox matters at all. He is a semi-orthodox Jew.

556 *Plaintiff's Witness, Samuel Buchler, Direct*

Q. He is not of the ultra orthodox; is that it? A. Seventy-five per cent of strictly orthodox Jews would not consider him an authority.

Q. Is that the signature of Rabbi Jaffre (indicating)? A. Yes.

Q. What is contained in that? A. I did not read it yet. He withdraws the prohibition that was issued some time ago in the newspapers as not to make any benediction upon citrons from Korfu.

By the Court:

557 Q. Coming from Korfu? A. Coming from Greece.

Q. Which is it, Korfu or Greece? A. I must look it over then again. It is Korfu.

By Mr. Fried:

Q. Are you familiar with the attack that was made with the prohibition? A. Upon whom?

Q. Upon those citrons and the dealers? A. I am.

Q. And the prohibition issued by the rabbis? A. Yes.

Q. Against Korfu citrons? A. I know that; yes.

Q. It was not against Greek citrons? A. I see only the name Korfu.

558 Q. The prohibition was Korfu citrons? A. Korfu citrons I see here.

Q. Not against Greece generally? A. I do not see Greece; the word used here.

By the Court:

Q. You said where you could not get any Palestine citrons you used Korfu citrons? A. Yes.

Q. Are you using the word Korfu just the same as the word Greece? A. I use it as coming from the Island of Korfu.

Q. Do you know of any other citrons than Palestine citrons and Korfu citrons? A. We mostly have

*Plaintiff's Witness, Samuel Buchler, Direct*

559

bought citrons coming either from Palestine or from Korfu. I am not a dealer.

Q. You are making a distinction between Palestine citrons and other citrons? A. Yes.

Q. When you speak of Korfu citrons you are referring to all other citrons? A. I was referring to citrons outside of Palestine, a collective expression for other citrons.

Q. Is that in general use, Doctor? A. General use, yes.

Q. Korfu citrons is a general term understood to apply to all? A. To all that come outside of the territory of Palestine. 560

By Mr. Fried:

Q. Doctor, you have never dealt in citrons yourself? A. No.

Q. Do you know that there are citrons in Parga, Greece? A. I think so, but I am not familiar with it. I would not recognize a citron coming from there.

Q. Are you familiar with the Karmala citrons? A. I would not recognize a citron coming from there.

Q. Do you know that citrons come from those places? A. I heard that citrons come from there of course. 561

Q. Have you ever spoken to any of the old, orthodox Hebrews with reference to citrons? A. I did.

Q. Are you actually familiar with the prohibition that was made? A. Which prohibition are you referring to?

Q. The prohibition that was made 25 years ago, by the rabbis from Kovno, are you familiar with that? A. I read that.

Q. Do you know whether they were against citrons outside of Korfu or against Korfu citrons?

562 *Plaintiff's Witness, Samuel Buchler, Cross*

Mr. Miller: I object.

The Court: Objection sustained. You may have it translated if you desire.

Mr. Fried: I except.

The Court: You are speaking about the prohibition signed by the twenty-one rabbis?

Mr. Fried: No, I am not. I am talking about the prohibition in 1891.

The Court: Then I will allow that question.

563 Mr. Miller: I object to that on the ground that the proclamation speaks for itself, and it is in evidence.

The Court: Objection overruled.

Mr. Miller: Exception.

A. I am not sufficiently familiar with the matter so as to make a statement.

*CROSS-EXAMINATION by Mr. Miller:*

Q. What college did you graduate from? A. Do you refer to my divine education?

Q. Divine? A. The Jewish Theological Seminary of Trestberg.

564 Q. Where is that? A. Hungary.

Q. When? A. In 1901.

Q. With what institution did you become connected after your graduation? A. I became connected with Strassburg University, Germany, with Menken University, and finally I got my Ph. D. in Berne, the capital of Switzerland, the Swiss University.

Q. When did you first enter upon your duties as a minister? A. About nine years ago, here in the United States.

Q. For the first time in this country? A. For the first time in this country.

*Plaintiff's Witness, Samuel Buchler, Cross*

565

Q. With what congregation? A. With the Peoples Synagogue of the Educational Alliance.

Q. Are you orthodox or semi-orthodox? A. I am an orthodox Jew.

Q. Strictly orthodox, are you? A. Well, it is not up to me to decide that.

Q. You drew the line. A. I can draw the line when it comes to judge somebody else.

Q. Your congregation? A. My congregation at the present time is strictly orthodox.

By the Court:

566

Q. Are you a member of the Union of American Orthodox Congregation? A. I am a member of the Congregation of Orthodox Congregation.

Q. There are three unions? A. There are three or four, I believe, yes.

By Mr. Miller:

Q. The one you are connected with now is on Bedford Avenue? A. 904 Bedford Avenue.

Q. And known as what? A. As Beth Hula.

Q. Is that in Brooklyn? A. Brooklyn.

Q. How long have you been connected with that congregation? A. Just a few months now.

567

Q. With which one were you connected, if at all, prior thereto? A. Bula Hasid.

Q. Where is that? A. In Jefferson Avenue, Brooklyn.

Q. How long were you there? A. A year.

Q. Before you became connected in this country with the first congregation, did you know of this proclamation that had been issued in 1891 prohibiting the use of citrons growing at Korfu and also in all other parts of Greece? A. I knew that under the circumstances then they have been prohibited.



568 *Plaintiff's Witness, Samuel Buchler, Cross*

Q. You knew that? A. I knew, yes.

Q. Before you came to this country? A. Before I came to this country.

Q. Did you consider the rabbis that joined and signed this proclamation as authorities upon that subject? A. I considered that it is a temporary prohibition, not a permanent one.

Q. Did you ever read the proclamation itself? A. In the original text, do you mean?

Q. In any other way? A. I did not.

569 Q. Did you see the original text? A. I did not. I just read the history of the proclamation.

Q. Where did you read the history of it? A. I read it in the Jewish Encyclopedia.

Q. Did you read it anywhere else? A. Maybe published in some newspapers, but I can't recollect.

Q. Did you ever know or hear of Rabbi Isaac Elchanin? A. Yes, I did.

Q. In Kovno, Russia? A. Yes.

Q. In your opinion was not he one of the greatest authorities during the time of his life? A. He surely was.

570 Q. If I were to tell you that he joined in the proclamation prohibiting the use of citrons coming from Kerfu, and any other part of Greece, would you follow his instructions regarding the same? A. I personally am in the habit not to follow every authority. The old Jews, as a rule, do that. We have always a hundred authorities.

By the Court:

Q. They merely express their opinion? A. Yes.

Q. And a certain group of Jews follow them?

By Mr. Miller:

Q. You, as a minister, would not you take instructions on such questions from a rabbi like Isaac El-

chanin rather than follow your own conscience or dictation of your own conscience on the subject? A. I believe every minister follows rather his own conscience.

Q. You do believe that? A. Yes.

Q. You in no sense would follow? A. In many ways I would follow, if it is a question I could not decide for myself.

Q. I ask you, Doctor, do you think you could decide for yourself much better a proposition upon the question of the use of citrons during the Festival of Tabernacles and the use of citrons better than Rabbi Isaac Elchanin? A. Yes, I think that living in the United States of America I could decide it better for myself than accept the opinion of Rabbi Elchanin made twenty-five or thirty years ago, under other circumstances. There is no doubt about it. 572

Q. You speak about this country? A. Yes, a prohibition that has been given in another country must not necessarily be extended to this country.

Q. Did you know Dr. Jacob Joseph, Chief Rabbi, did you hear of him? A. I have not met him personally, but I have heard of him.

Q. Would you consider him an authority, a much greater authority than yourself upon that subject? A. I do not consider myself an authority. 573

Q. Then would you consider him, Dr. Jacob Joseph, the Chief Rabbi? A. I am so much authority that I would say he is not absolute authority.

Q. You know enough to decide that Jacob Joseph, Chief Rabbi, was no authority? A. Everyone of us knows no better to decide upon others than about himself.

Q. Do you mean to say that in this particular question each one is an authority for himself? A. Each minister is an authority for his congregation.

574

*Plaintiff's Witness, Samuel Buchler, Cross*

Q. You would not follow any other authority even though he may be the greatest one on the subject? A. I would if I could not decide it for myself, if I am in doubt.

Q. You think you could decide that question much better than the Chief Rabbi, Jacob Joseph, yes or no, Doctor, and let us get to the question; do you think you could decide this question much better than the Chief Rabbi?

Mr. Fried: I object.

The Court: Objection sustained.

575

Q. I show you this proclamation translated into English—

By the Court:

Q. You do not mean to say that you would not give the views of those men serious consideration?

A. I would give it serious consideration, no doubt.

Q. As a matter of fact, the strictly orthodox seminary here is called after Rabbi Isaac Elchanin? A. We have many other orthodox seminaries.

Q. The strictly orthodox, the one in New York?

A. There are many in New York, many extreme. There is Jacob Joseph and there is Isaac Elchanin.

576

Q. Any others? A. I think there is another one, Ets Himmell.

Q. The Elchanin is the largest seminary and the most important of the extreme orthodox? A. Yes.

Q. It is decidedly the most important? A. Yes.

Q. And then the Jacob Joseph? A. Is also important.

Q. That is more of a high school? A. Yes, but now they are teaching public school in high school.

Q. It is preparatory? A. Yes.

*Plaintiff's Witness, Archie Goldman, Direct*

577

Q. So that the extreme orthodox has taken the name of Isaac Elchanin for its seminary and the name of Jacob Joseph for its preparatory school? A. Yes.

By Mr. Miller:

Q. Just examine this proclamation issued by Rabbi Isaac Elchanin and Rabbi Jacob Joseph, and the others who joined in this country, and tell us would you follow this?

Mr. Fried: I object to that.

The Court: Sustained.

Mr. Miller: Exception.

578

(Recess to February 28th, 1917, at 10 A. M.)

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New York, February 28th, 1917.

(Trial resumed.)

ARCHIE GOLDMAN, called as a witness in behalf of the plaintiff, being first duly affirmed, testifies as follows:

*Direct-examination by Mr. Fried:*

579

Q. Were you connected with the Artic Freezing Company? A. I was.

Q. Do you know Mr. Saland, the plaintiff in this case? A. I do.

Q. I show you this receipt and ask you if this is a receipt that you issued to Mr. Saland?

(Witness examines the paper handed him by counsel.)

A. Yes.

Mr. Fried: I offer this in evidence.

580

*Plaintiff's Witness, Archie Goldman, Direct*

Mr. Miller: I object to that on the ground it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Received in evidence and marked Plaintiff's Exhibit No. 23.

Q. That calls for 73 boxes of lemons. Is that these citrons? A. Yes.

Q. And 230 small boxes? A. Yes.

Q. Did you receive from Mr. Saland those citrons? A. I did.

Q. You had them in your place? A. Yes.

581 Q. You had a storage house at No. 119 and 121 West Street? A. Yes.

Q. Under what conditions did you keep it?

Mr. Miller: Object to that as incompetent, irrelevant and immaterial, and not within the issues.

The Court: Objection sustained.

Mr. Miller: Exception.

Q. Have you kept fruit in your place? A. Yes.

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

582

Q. How long were those citrons in your place?

A. I can tell best if you will permit me to look at my ledger.

By the Court:

Q. Did you ever examine these packages yourself?

A. I did.

By Mr. Fried:

Q. Look at your book. Will that refresh your recollection? A. Yes.

*Plaintiff's Witness, Archie Goldman, Direct*

583

Q. Tell us how long you kept them? A. They were received on September 28th, 1915, and delivered on the 20th of March, 1916.

Q. Where did you keep them, in what part of your storage house?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. In keeping fruit in your storage house, did you have, in 1915, at the time the fruit was stored at your place—did you have a refrigerator in your place?

584

Mr. Miller: Object.

The Court: Sustained.

Mr. Fried: Exception.

Q. In what temperature were those citrons.

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. How often did you see the citrons?

Mr. Miller: I object.

The Court: Overruled.

A. Every month.

585

Q. With whom? A. The owner of the goods.

By the Court:

Q. Who was that? A. They were placed in the name of C. H. Widman.

Q. With whom did you see them? A. With Mr. Saland's brother and a gentleman named Widman.

By Mr. Fried:

Q. What condition were they in when you saw them the first month?

586 *Plaintiff's Witness, Archie Goldman, Direct*

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception.

A. First class.

Mr. Miller: I move to strike that out as a conclusion.

The Court: Motion granted.

By the Court:

587 Q. Describe it, tell us what you saw? A. Each of these citrons, or fruit was wrapped in jute and they were in boxes of different sizes, some boxes of a capacity of perhaps four or six up to perhaps 200 or 250.

By Mr. Fried:

Q. Did you examine the fruit at the end of the month? A. Not every box.

Q. Did you examine some of it? A. Yes.

Q. Did you see any change?

Mr. Miller: I object.

The Court: Sustained.

588 Q. What did you observe as to the citrons themselves when you looked at them.

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. Did you see them the following month?

Mr. Miller: I object.

The Court: Sustained, you have gone far enough on that now.

Mr. Fried: Exception.

Q. When did you last see them?

*Plaintiff's Witness, Archie Goldman, Direct*

589

Mr. Miller: I object.  
The Court: Overruled.  
Mr. Miller: Exception.

A. The day they were delivered the 20th of March, 1916.

Q. What was the condition of those citrons on the day when you delivered them?

Mr. Miller: I object.  
The Court: Sustained.  
Mr. Fried: Exception.

Q. Did you see them on that day?

590

Mr. Miller: I object.  
The Court: Sustained.

Q. How long have you been in the storage warehouse business?

Mr. Miller: I object.  
The Court: Sustained.  
Mr. Fried: Exception.

Q. Have you stored fruit in your warehouse before?

Mr. Miller: I object.  
The Court: Sustained.  
Mr. Fried: Exception. That is all.  
Mr. Miller: No questions.

591

By the Court:

Q. Mr. Goldman, you say there were some large boxes holding 250? A. Larger than that. They started at about four or six and went up to probably 200 or 250, each one of them wrapped in jute.

Q. You have down there 73 large boxes. Can you tell me how large those boxes were, the 73 large boxes? A. They would be anywheres from 12 by 12



592 *Plaintiff's Witness, Sundel Saland, Re-direct*

by 24 to 12 by 12 by 36, in other words two cubic feet and three cubic feet.

Q. How many citrons were contained in those boxes? A. 100, 150 up to 200 or 250.

Q. Citrons? A. Yes.

Q. In three cubic feet? A. Yes.

Q. And the small boxes? A. Anywhere from four up.

Q. Up to what? A. That would be hard to say because they ran in graded sizes.

593 Q. How large were these citrons? A. The size of a large lemon.

By Mr. Fried:

Q. In how many loads were these taken away from your place?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

By the Court:

Q. You never made any tabulation of the number in these boxes? A. No, only the boxes we counted.

594 By Mr. Miller:

Q. How is that? A. We did not count the individual fruit, only the boxes.

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SUNDEL SALAND, the plaintiff, resuming, testifies as follows:

*Re-direct examination resumed by Mr. Fried:*

Q. Now, Mr. Saland, in 1914 you had a conversation with reference to the price of citrons that you had

sold to the Hebrew Publishing Company and your conversation was with Mr. Werbelowsky? A. Yes.

Q. How many citrons were disputed, the price of how many citrons? A. I don't remember the bill exactly. I guess about 800 or a thousand, I could not remember how many it was.

Q. Did you have any conversation with him at that time with reference to the future sale of citrons by you to them? A. Yes.

Q. What was the conversation? A. I told him by next season I would not deliver any stock because I send a bill and they will O. K. and make the prices on it, I should not have any more dispute on it. 596

Q. What did they say to that? A. All right.

Q. Isn't it also a fact that citrons in order to be salable for the purposes for which you sold them had to be without any blemish whatsoever, isn't that correct?

Mr. Miller: I object.

A. Yes, sir.

The Court: He has so testified several times.

Q. Your figures on the price of citrons is sixty cents a citron? A. Yes. 597

Q. That figure comes without any palms and without leaves, without labor or any expense whatsoever?

Mr. Miller: Object to that on the ground it already appears what the sixty cents stood for.

The Court: Objection sustained. He has so testified.

Q. Prior to the year 1914, during what week did you do most of your business? A. The last week.

Q. That is the week before the Tabernacle Holidays? A. Yes.

598 *Plaintiff's Witness, Sundel Saland, Re-direct*

Q. You have also stated that the sales that you have made after September 14th and 15th, 1915, isn't that a fact that quite a number of those sales were in pursuance of orders you had received prior to September 14th, 1915? A. That is understood.

Mr. Miller: I move to strike out what is understood.

The Court: Motion granted.

By the Court:

Q. Please answer yes or no? A. Yes.

599 By Mr. Fried:

Q. Those sales that you read off were the deliveries? A. Yes.

Q. That were made during that last week? A. Yes.

Q. You were asked about an article that was inserted in the papers, in the "Jewish Daily News," on September 8th, 1915. Did you have an interview with a reporter of that paper? A. Which one do you mean, the "Morning Journal" or the "Daily News"?

Q. The "Jewish Daily News." A. Yes; I had.

Q. What did you ask him to announce?

600 Mr. Miller: I object to that on the ground we have tried to get into evidence yesterday the article in the "Morning Journal," of September 8th, which was the advertisement which your Honor excluded because this very witness said he did not pay for the advertisement.

The Court: I don't know yet that it is an advertisement. You only read certain things there, and I don't know it is an advertisement.

Mr. Miller: The article itself shows that it is.

The Court: I don't know whether the article was an advertisement or not.

Mr. Miller: I asked him whether he caused it to be published and whether he paid for it, and finally he said he did not pay for it, nor did he have cause to.

Mr. Fried: I do not want to misquote the facts.

The Court: What did he say?

Mr. Miller: He said he didn't remember.

The Court: He finally said he did not pay for it.

602

Mr. Miller: I object to their going into it.

Mr. Fried: That is another article altogether.

The Court: Objection overruled.

Mr. Miller: Exception.

A. I told the reporter I wanted him to put me up an article, and then shall sign as—

Q. We cannot hear you. A. I told the reporter they should put me up an article and it should sound like reading matter, that this year, 1915, I was trying to get Palestine citrons, and I could not get them, so I bought Greek citrons, and I brought them over here, and those were the only citrons which we have here in the United States, and we do not have the amount which we have usually in normal years; we have a very small amount, so the notice shall be given in time; we shall be able to supply our customers with their orders.

603

By the Court:

Q. Thereafter did you see the article? A. After it was printed?

Q. Yes. A. Yes; I did.

Q. Was that the article which Mr. Miller called to your attention yesterday? A. No, sir.

604 *Plaintiff's Witness, Sundel Saland, Re-direct*

Q. Was there another article? A. In another paper.

Q. Was this the "Daily News"? A. The "Daily News."

Q. Was that article which Mr. Miller read to you yesterday from the "Daily News"? A. No; it was in the "Morning Journal."

605 The Court: Then we will strike out the whole testimony, if that is the case. I took it for granted it was the article in the "Daily News." The motion is granted to strike it out.

Mr. Miller: I move to strike it all out.

The Court: Strike out the question and answer. I will sustain your objection if it is not same article.

Mr. Fried: Exception.

By Mr. Fried:

Q. Mr. Saland, on September 8th, 1915, did you insert an advertisement in the "Jewish Daily News"? A. Yes, sir; I did.

606 Q. I will show you this "Jewish Daily News" of September 8th, 1915, marked Plaintiff's Exhibit No. 9 for identification, and ask you whether this is the article? A. (Witness examines the paper handed him by counsel.) Yes; I did.

Mr. Fried: I offer this in evidence.

By the Court:

Q. You authorized it, you authorized them to publish this article? A. I did not say exactly the words.

Q. You paid for it? A. Yes.

Q. You raised no objection to it? A. No; I raised no objection.

*Plaintiff's Witness, Sundel Saland, Re-direct*

607

Received in evidence and marked Plaintiff's Exhibit 9.

The Witness: There are a few errors in the article there in the "Jewish Daily News."

Q. You authorized that, you paid for that publication? A. Yes.

Q. You told him to publish something? A. Yes.

Q. You saw it and thereafter paid for it? A. Yes; afterwards paid for it.

By Mr. Fried:

Q. What did you tell him to publish?

608

Mr. Miller: I object.

The Court: Objection sustained.

By the Court:

Q. State the conversation you had with the reporter. A. I told the reporter that I want he shall put me up an advertisement to let know the public about the situation of citrons in the year 1915, and I have tried to get over Palestine citrons, and Palestine I could not get, so I brought over citrons from Greece, or some other parts, and he shall make it as a reading article in the paper.

609

Q. Did you see the proof of the article? A. No; I did not.

Mr. Fried: I offer in evidence the translation.

Mr. Miller: I object.

Q. Do you speak Yiddish yourself? A. Yes.

Q. Do you read Yiddish? A. Yes.

Q. Do you read Yiddish papers every day? A. Yes.

Q. Where were you educated? A. Part in Palestine and part in the United States.

610 *Plaintiff's Witness, Sundel Saland, Re-direct*

Q. How long were you in Palestine? A. Ten years.

Q. How old were you when you left there? A. About ten years.

Q. Do you read Yiddish books? A. Yes.

Q. Can you state that that translation is a correct translation of the article? (Witness examines the paper handed him by counsel.)

The Court: Who made this translation?

Mr. Fried: Dr. Brill, the same man who translated the first one.

611

Q. Did he make the first translation also? A. No; there is one error here which is correct, except this, I did not give this to him.

Q. Isn't it a translation of the article? A. Yes.

Mr. Miller: In order to facilitate matters, I have here Mr. Harkaly. If they will permit him to go on the stand and translate it, I will not question it.

The Witness: He could not translate it any better than anybody else.

612

The Court: Are you satisfied to have the defendant's man go on the stand and translate it?

Mr. Fried: I do not think that I have any objection.

The Court: Put in your correction that you claim out to be made.

By Mr. Fried:

Q. It is substantially correct? A. But that is the main point I want to bring out; it is not translated there.

By the Court:

Q. Part of it is not translated? A. Part of it is not translated.

The Court: Mark the part that is not translated.

By Mr. Fried:

Q. What does that part say? A. But Mr. Saland is—I don't know how to explain it—I am not a translator.

Mr. Fried: I would submit that Dr. Hark-  
aly look over the article and find out in what  
respect it is incorrect. 614

*RE-CROSS EXAMINATION by Mr. Miller:*

Q. Mr. Saland, you said in 1916 you also imported citrons into this country? A. Yes, sir.

Q. How many did you bring over? A. About twenty-five thousand.

Q. Were they all Greek citrons? A. Yes.

Q. How much did you sell them in the market for, wholesale? A. \$2 and up.

Q. The lowest, the minimum was about \$2? A. 615  
Yes.

Q. In 1916 had war conditions changed? A. No.

Q. Conditions were alike, you said no. A. War conditions have not changed—pardon me, it was changed.

Q. When you answered no, did you mean yes? A. Yes. In this particular case I say yes, because I had an error before, saying no.

Q. You made a error when you said no? A. Yes.

Q. When you said no, you meant yes? A. Yes.

Mr. Fried: I object.

The Court: Overruled.



616 *Plaintiff's Witness, Sundel Saland, Re-cross*

Q. Now, I will let you withdraw the no, and you say yes? A. Yes.

Q. War conditions have changed? A. Yes.

Q. With regard to Greece? A. Yes.

Q. Was it easier to bring over citrons from Greece in 1916 than in 1915? A. Yes; I do not mean easier, but cheaper. It was easier to get them there, not to bring them over; but to get them there.

Q. The expenses of bringing over were alike? A. Maybe it was more.

617 Q. Still more? A. Yes; but the goods were cheaper there in 1916 than in 1915.

Q. You mean you could buy them in Greece cheaper from the farmers? A. Yes.

Q. How much did you pay in 1916 when you bought them from the Greece farmers? A. I was not there myself, but I sent my agent there.

Q. Then you don't know? A. Yes; I know what he paid for it. I paid the money for it.

Q. You sent an agent over? A. I sent an agent over.

Q. Is your agent in court? A. No; he is not.

Q. What is his name? A. Goldberg.

Q. T. Goldberg? A. Yes.

618 Q. He is the same agent that has appeared in other transactions? A. Yes.

By the Court:

Q. Your brother-in-law? A. Yes.

By Mr. Miller:

Q. And he is not here in court? A. He will be a little later, and Mr. Cutler was there.

Q. Mr. Cutler, that was the partner? A. This year is a regular partnership.

Q. The last year you had a limited partnership? A. Yes.

*Plaintiff's Witness, Sundel Saland, Re-cross*

619

Q. The two of them went to Greece? A. Yes.

Q. Have you any knowledge yourself how much they paid to these farmers? A. Yes.

Q. How much? A. One franc, and the highest two francs.

Q. The highest two francs? A. I guess so.

Q. You guess so, or do you know? A. I guess so.

Q. You are not sure? A. They can testify.

Q. What was the highest that you got for citrons in 1916 wholesale? A. I sold those in \$2, and of course it goes up on the quality.

Q. I asked you the highest you got for some of them? A. Some of them I had as high as four dollars and three dollars. 620

Q. Three and four dollars? A. Three and four dollars.

Q. In 1915 you got as much as five dollars for the highest? A. For the highest, some of them.

Q. And the lowest was three dollars? A. Yes.

Q. Those were what you would call the common ones? A. Original.

Q. Originally good? A. Yes.

Q. How much cheaper was the citron in Greece between 1915 and 1916, the cost price? A. On the average, you mean? 621

Q. That you bought from the farmer direct? A. On the average?

Q. The average, average it up as you please, what I am interested in is how much cheaper that one citron cost direct from the farmer? A. About one-third of the money from the previous year, 1915.

Q. About a third? A. Yes.

Q. How much did a citron stand you in United States money, in 1916? A. With all my expenses—

Q. I ask you what you paid? A. I don't know what you asked.

622 *Plaintiff's Witness, Sundel Saland, Re-cross*

Q. The cost price?

Mr. Fried: I think he should be allowed to show the expenses on 20,000—

The Court: Answer the question.

The Witness: About twenty cents.

Q. About twenty cents? A. Or twenty-five cents, I didn't figure it out, but approximately twenty or twenty-five cents.

Q. Did you dispose of all the 25,000 citrons in 1916? A. All the good ones.

623

Mr. Miller: I move to strike out the answer.

The Court: Motion granted.

Q. Did you dispose of all the 25,000? A. I disposed of 20,000.

Q. What did you do with the other 5,000? A. I sold them for preserves.

Q. How much did you get? A. Two cents or a cent and a half apiece.

Q. Do you know to whom you sold it? A. Yes.

Q. Did you sell them in bulk or did you sell in piecemeal? A. Pieces, counting the pieces.

624 Q. Were there any dealers in New York City you sold them to? A. Pushcart peddlers.

Q. Have you got the Consular invoice for this shipment? A. I don't know, if it was, I gave it to Wells-Fargo, all the documents.

Mr. Miller: I asked counsel the other day that he was going to produce the Consular invoice in 1915.

Mr. Fried: I said I would subpoena Wells-Fargo. They were here all day yesterday and the day before. Wells-Fargo has the invoices.

*Plaintiff's Witness, Sundel Saland, Re-cross*

625

Q. Since yesterday I have asked you to produce the letter that was referred to in one of the telegrams, the Springfield telegram. Have you since located that letter? A. It is with the counsel.

Q. You still say it is with the counsel? A. Yes.

Mr. Fried: He does not still say it. It is with the counsel.

Q. Is this the letter that is referred to in the telegram, Plaintiff's Exhibit No. 17—compare that? A. Yes; it is.

Mr. Miller: May I have it read before I offer it in evidence—counsel refuses to permit me to read it.

626

The Court: You may have it translated. You are entitled to it.

Q. You testified that the week before the holidays you usually make most of the sales? A. Yes, sir.

Q. And that is why, between September 14th, the day before the Hebrew Festival of the Tabernacles, as a rule, you dispose of most of the goods? A. I did not get it.

Q. Isn't it a fact that a few days before the Jewish festivals arrive, the Festival of Succoth, that those days citrons are sold by wholesale and retail dealers very cheap a few days before the holidays, in order to dispose of the stock? A. No, sir; the wholesale is coming before, and the dealers in New York are taking in the stuff, I will tell you why, because they did not take any stuff before—

627

Mr. Miller: I move to strike out the whole answer.

The Court: Motion granted.

Q. Don't you know that two days before the holidays, or three days before the holidays, the dealers

628

*Plaintiff's Witness, Sundel Saland, Re-cross*

dispose of it at any price to get rid of the stock?  
A. No, sir; only the last day.

Q. Didn't you yourself, in previous years, in 1914 and 1915, dispose two days before the holidays for as cheap as you could? A. No; not the good stuff I have for sale; maybe the common ones, the last day.

Q. That is why you had rather permit five thousand to remain over the holidays and sell them for a cent or a cent and a half for preserves? A. The spoiled ones, I said.

Q. All of those were spoiled? A. Yes.

629

Q. Every one of the five thousand? A. Yes.

Q. So you have never sold cheaper citrons within two or three days before the holidays than the regular price you sold before? A. I did not say never.

Q. You did sell some years? A. Some, all according to circumstances.

Q. You did sell cheaper? A. Under the circumstances.

Q. In 1914 there were no circumstances to change it? A. In 1914 it was kind of stuff, I had very cheap stuff; it was a kind of change in Palestine citrons.

630

Q. Did you sell cheaper then two days before the holidays than the usual market price that you offered before that time? A. On the perfect goods I did not, and on the common I did.

Q. On those that you called good, commonly good? A. I did not have any any cheaper until I was through with all my stock, before Yom Kippur.

By the Court:

Q. Five days before the holidays? A. Yes.

By Mr. Miller:

Q. Five days before you disposed of the whole stock? A. Five days before I disposed of the whole stock from Palestine citrons.

*Plaintiff's Witness, Sundel Saland, Re-cross*

631

Q. That is 1914? A. Yes.

Q. You only had very few Greek citrons in 1914?

A. About twenty-seven cases, about 2,500 to 3,000.

Q. You had about, you say, 10,000 Palestine citrons? A. Yes.

By the Court:

Q. Did Palestine citrons sell easier than Greek citrons in that year? A. No; I came over here from Parga in 1914, every year I have to explain it.

Q. What proportion of your stock had you sold over a week before the holidays in 1914? A. I 632  
1914, I supplied the country—

Q. In what proportion had you sold more than a week before the holidays before the eve of the first day of the Feast of Tabernacles, what proportion of your stock had you sold more than a week before that? A. About one-third.

Q. Then you sold practically two-thirds in two days? A. Two or three days.

Q. You had only sold about a third before? A. About a third.

Q. In 1916, what proportion did you sell? A. In 1916 it was also about the same.

Q. About a third? A. About a third the week 633  
before.

Q. In 1913, can you tell me what proportion you sold? A. I could not say exactly the year, but I know usually that is the way of selling this stock.

Q. About one-third? A. Yes.

Q. In 1915, can you tell me the proportion, the year you are complaining about? A. It was also about one-third.

Q. The article appeared seven days before? A. Which article?

Q. This article about which you are complaining of.

634 *Plaintiff's Witness, Sundel Saland, Re-cross*

Mr. Miller: The article of the 14th and the 15th.

A. Yes.

Q. One week before? A. Yes.

Q. You sold about the same proportion according to your testimony; I want to get this straight? A. Yes; but I did not—

Q. Did you sell about the same proportion of all your citrons in 1915, during the week before the holidays, that you had previous to it? A. No. I did not.

635 Q. Let us get the figures again. In 1913 what proportion had you sold about a week before the holidays? A. 1913, about a third.

Q. How much did you sell within a week before the holidays? A. In 1913, I don't remember exactly, but about two-thirds.

Q. In 1914 how did it stand? A. About the same.

Q. In 1915 you gave us the figures? A. In 1915 I did not sell a third I have to sell.

Q. In 1915 you had also sold one-third more than a week, and two-thirds thereafter? A. Yes.

636 Q. Give me the explanation; go on and give me the explanation for 1915? A. In 1915 I did not have the palms to offer for the country, and naturally I could not send out the orders, I must send them out complete, and I have to order these palms from California, so the palms came in in a rotten condition, and as I sent out the letters to the country, to the people in the country, it was very late in the season, I sent them out before Shannon, that was on the 9th day of September, and then they have the New Year's Festival; Thursday was the 9th and Friday was the 10th and Saturday was 11th, so on the 12th I should commence to send out some orders, and then the order from the country come in very late, because I can

prove it, I have marked yesterday some orders on the 14th and 15th, and these orders came in from the country, and in normal years they are coming in from the country more, so if it will be some other time, and this time I would have sold much more than I sold this year, so that was the reason.

Q. When did you send out your letters previously, say in 1916? A. In 1916 I send my letters very early, because I was here at the time, and I went over to California to furnish palms there.

Q. When did you send them out? A. Before they arrived, about two weeks before the holidays.

638

Q. Before which holidays? A. Three weeks before the Tabernacle holidays.

Q. Are you sure it was three weeks? A. I can't remember exactly.

Q. May it have been two weeks? A. No; I guess it was three weeks.

Q. You sent them out that year before you got the lulavim? A. No, I sent out only the notice; they usually send me their orders.

Q. You sent the letters out before you got the lulavim? A. I had secured those from California, and then I knew they were perfect.

Q. But the year before you did not know that? A. No; the year before I have the lulav from Italy.

639

Q. When did you get those? A. I get one part of them on the 29th, I guess.

Q. Of what? A. In September.

Q. No; I am speaking of 1915. When did you get the lulavim from Italy? A. The first part I get on the 29th of August.

Q. Then what did you do? A. The next shipment, I had it in two shipments, but the next shipment—

Q. That first shipment, was it good or bad? A. I guess I have a mistake. I have to look it up.



640      *Plaintiff's Witness, Sundel Saland, Re-cross*

Q. I do not want to be unfair to you, Mr. Saland. I merely want to get the facts cleared up in my mind. You state you had a conversation with Mr. Werbelowsky on the 5th of September? A. Yes; it was on the 4th of September I had the first palms.

Q. You told Mr. Werbelowsky—repeat that conversation to me? A. I told Mr. Werbelowsky that on account I paid higher for the stock this year, and on account that the palms came over very rotten, and I have to go to secure some other palms from California, so I am not able to sell the lower grade goods  
641 for \$3 and the higher grade \$4, but I will give him the exceptional price and give him the high grade \$3 on account he can make some more profit on it, and he says, "No, I will never pay this price. Look here, if you cannot give me a lower figure, take a small commission, or if you want to take me in a partner in the business, we will go hand in hand and work on it, and we will both make money on it, and if you do not go to do that, then we will start an advertising campaign against you, and you will see you will remain with all your stock."

So I said, "That is a ridiculous thing; I guess you cannot conduct my business. I am willing to give  
642 you security that you will make a thousand dollars' profit, but I will give you the high-grade stock for \$3, and you will sell it for \$3 and up, so I know you will make a thousand dollars, and if you will make less than a thousand dollars, I will put it up, or you shall sell it on a commission basis, and I will give you half a dollar a set."

He said, "There is nothing doing, only the way I told you."

Q. In your testimony, as I remember, you said something about he has to have the price in order to send to his customers. Do you remember that? A. That was the first conversation. That was on the 29th.

Q. Of August? A. The 27th of August.

Q. Will you tell me that conversation in regard to that matter? A. He asked me if I have the esrogim before I went away to Europe, I went up there.

Q. No; all I am interested in is in regard to the question of how he had to have a price? A. I told him, you can send out your notice that you will have the set complete for your customers, but he does not know what the price will be.

Q. Did you say anything further? A. I am doing the same thing.

Q. You told him that on the 27th of August? A. Yes. 644

Q. You were sending out letters? A. Yes.

Q. Asking for their orders? A. Yes.

Q. Is that correct? A. Yes.

Q. Were you sending them out on the 27th or the 28th of August? A. I did.

Q. What did you do thereafter? A. I got replies that they did not want to give any order from the country because they want to know the prices, so in the meantime, up until September 5th or 4th, then I gave them the prices, and then I send the prices to the country.

Q. On September 4th? A. On September 5th. 645

Q. You sent them out on September 5th? A. Yes.

Q. Sixteen days before? A. Sixteen days before the holidays.

Q. Where do the greater part of your orders come from? A. Mostly Chicago; well, I have as far as San Francisco.

Q. You have not many? A. In Chicago is most.

Q. At least ninety-five per cent of it is in Chicago or east of it, isn't it? A. All my business is most in New York.

Q. Fully ninety-five per cent of it is Chicago, or east of Chicago? A. I don't understand.

646 *Plaintiff's Witness, Sundel Saland, Re-cross*

Q. What made you bring over a larger shipment of citrons in 1916, than in 1915? A. Because they were cheaper, and I could buy more.

Q. Did you feel confident you could sell them? A. The other reason, in 1915 there was a scarcity there in the stock in Greece, on account of Russia and Germany.

Q. In 1916 you brought over some 25,000. Did you expect to sell them all over here? A. Beside, I have to figure out the worst.

Q. Did you expect to sell them? A. Yes.

647 Q. How did you sell them, then; were you and Mr. Cutler in partnership together, or did you sell them in Mr. Cutler's name, or your name, or how? A. I sold to my customers the regular way, and he sold to his customers. In this business every one has some confidence in his shipper.

Q. You felt the people had confidence in you? A. Yes.

Q. You had a good reputation in 1916? A. Yes. No; I did not have a good reputation; my reputation was killed. How could I have a good reputation?

Q. You brought over 25,000 in 1916, expecting to sell them under your own name? A. It was in the same name.

648 Q. Under the same name? A. Yes; but I suffered for it, because—

Q. You did not expect to be able to sell as many as you would have sold in 1914? A. No.

Q. How many did you bring over in 1914? A. Myself, I had about 13,000. In 1914 I had about 13,000, and Mr. Goldberg, I guess, had about 10,000, and Mr. Cutler had about the same; and in 1916 it was all combined together, and we did not buy only 25,000, and of this 25,000 we have to throw out, we have to pick them out, there will only remain 20,000 to sell, or 22,000.

Q. But you brought over 25,000 instead of 15,000 you brought in 1915? A. Yes.

Q. In 1915 did you have any difficulty in buying more in Piraeus, could you have bought more? A. No; very hard.

Q. You told me you were representing other dealers out there? A. I represented Germany.

Q. You were able to buy for them? A. Yes; Germany buys always the cheapest stuff; there is two grades and the cheapest stuff is always bought for Germany. Here in the United States they always want perfect stuff, and the common stuff I bought for Germany, and the better grade I bought for myself. 650

Q. How about Russia? A. There were all the buyers there in Piraeus and in Salonika, and from Austria there was also at Salonika, and Mr. Rothschild himself was at Salonika.

Q. In 1915 you and Mr. Cutler were each selling goods under your own name? A. Yes.

Q. Who kept the books in regard to the sale? A. I had my brother-in-law, Mr. Margolis.

Q. That book that you were reading from, was that kept by Mr. Margolis? A. Yes.

Q. Was that referring to your sales or Mr. Cutler's, or both? A. Both. 651

Juror No. 10: On what day did this alleged libelous article appear in the newspaper?

The Court: The 14th and 15th. We have not got the date of the one paper yet, but I believe it is the 14th and 15th of September.

By Mr. Miller:

Q. How many citrons did you sell the day after this article appeared up to the first day of the holidays? A. About 6,000.

652 *Plaintiff's Witness, Sundel Saland, Re-cross*

Q. 6,000 after the appearance of the article, up to the first day of the Feast of the Tabernacles, you sold about 6,000 citrons? A. Yes.

Q. How many citrons did you sell during the same period in the previous year, or the year 1916? A. What I sold, or the whole market sold?

Q. You. A. The market was so—

Q. How many citrons were you in the habit of selling the year before, in the usual, ordinary times, during the same period, from the 15th up to the first day of the Festival of the Tabernacles? A. I, myself, I was figuring about one-third before, and about  
653 seven or eight thousand, only myself, but of course some other dealers, without me; there were some three or four or five importers.

Q. I mean altogether? A. Altogether it is usually sold about thirty thousand.

Q. You sold thirty thousand? A. Thirty thousand.

The Court: Not he personally; the market generally.

Q. Do you mean to your agents? A. Not myself; but some other importers, every year.

Q. Speaking for yourself, you sold in that week after the article appeared, you sold 6,000 up to the  
654 first day of the Tabernacle? A. Yes.

Q. Between the 15th of September and the 23rd? A. Yes.

Q. You sold 6,000? A. Yes.

Q. And during the same period in previous years, you sold how many? A. About 30,000.

By the Court:

Q. You, yourself, or you and your agents? A. I and my agents, about 8,000.

By Mr. Miller:

Q. There is only a difference of 2,000 citrons which you sold, less? A. I could not supply the market on other years. I am not controlling the market.

Mr. Miller: I object to the explanation.

The Court: I will allow it.

Mr. Miller: Exception.

The Witness: You have to understand it, that in normal years I am not the only importer; there is about four or five importers beside me, and every one has his customers, and in 1915, the whole market was in my hand; I was the only one in the market; so in comparison with other years, if I would be in other years in the market alone, I would sell 30,000.

656

The Court: I will strike that out.

Mr. Miller: I move to strike that out, that he was the only one in the market.

The Court: Motion denied. I will allow that to stand. I will strike out the other.

By the Court:

Q. Were you the only person in the market? A. With Mr. Cutler.

Q. Didn't you state on your direct-examination that a Greek had Palestine citrons? A. They had about 200 citrons. I had 150 Palestine citrons also, but I did not advertise them, because they do not amount to nothing.

657

Q. In other years you had been laying particular stress on the fact that you were bringing over Palestine citrons? A. I was bringing over, yes.

Q. You were laying particular stress on that, were you not? A. I did not get it right, what you mean.

Q. You laid particular emphasis upon the fact that you were importing Land of Israel citrons? A. I

658 *Plaintiff's Witness, Sundel Saland, Re-cross*

did not advertise it, only from the Land of Israel, at the time I advertised some others. When I advertised some others I just advertised this way, "Mr. Saland arrived here with his stock of citrons, palms and myrtles."

Q. Didn't you lay emphasis on the fact that they were Palestine citrons? A. If somebody asks for Palestine citrons, I will give him Palestine citrons.

Q. You have been in the citron business, and you know the demand for citrons. According to your experience, do the people not ask for Palestine citrons?

659 A. No; not all of them.

Q. The majority? A. The majority in different sections; for instance, if you take the Hungarian Jews—

Q. No; the whole citron trade as a whole, do they not ask particularly for Palestine citrons? A. No, sir.

Q. They do not ask particularly? A. No, sir.

Q. For Palestine citrons? A. No, sir; not my customers.

Q. Rabbi Margolies and Rabbi Buchler both testified yesterday they wanted Palestine citrons when they could get them. A. They want them, but they cannot get them, but I have my customers and I will have them on the stand; I have Rabbi Rosen.

660 Q. How much does Rabbi Rosen usually buy? A. One hundred or two.

Q. How many did he buy this year? A. One hundred or one hundred and fifty.

Q. In 1915? A. In 1915 he bought the same amount. He bought about one hundred in 1915.

Juror No. 9: The witness has testified that for the week previous to the Passover, two-thirds of the sales were made.

The Court: During the week.

Juror No. 9: During the week. Does that really mean sales or deliveries? He has also

*Plaintiff's Witness, Sundel Saland, Re-cross*

661

testified that a great many of the orders were taken a few days or a week, perhaps, prior to the festival.

Juror No. 9: Were these deliveries or were they sales?

The Witness: It was deliveries.

Q. How much time elapsed between the sale and the delivery? A. It is only the nearest countries here.

Q. After you get an order how long do you wait before you make a delivery? A. Sometimes an hour and sometimes two.

662

Q. So that the sales and deliveries are practically made at the same time? A. Yes.

By Mr. Fried:

Q. The sales and deliveries in the city? A. Yes; in the city.

By the Court:

Q. How long after the orders from out of town are received do you make the consignment? A. Sometimes two days and sometimes three days. It depends on where it is coming from.

Q. How long after you get the order do you send out your goods? A. When I get the order I send out the goods immediately.

663

Q. As soon as you get an order you send out the goods? A. Yes.

Q. That refers to city deliveries as well as out of town? A. Yes; when I get the order I am delivering.

By Mr. Miller:

Q. You told the Court generally there was no special demand or preference over Greek citrons, that Palestine citrons as well as Greek citrons in the mar-



664 *Plaintiff's Witness, Sundel Saland, Re-cross*

ket were about alike, as far as demands were concerned?

Mr. Fried: I object to that, on the ground that this question has been gone over for hours yesterday and today, and has been gone into thoroughly by the Court.

The Court: Objection overruled.

Mr. Fried: Exception.

Q. So you so state? A. Yes.

Q. And you say so now? A. Yes.

665 Q. Did you hear your own father-in-law, Rabbi Margolies? A. Yes.

Q. He testified yesterday that there was a preference, not only there was a preference, but when Palestine citrons could be obtained, that Palestine citrons only should be used, do you disagree with Rabbi Margolies, your father-in-law; do you disagree on that subject with your own father-in-law, Rabbi Margolies?

Mr. Fried: I object on the ground it is already answered and inquired into by the Court and counsel.

The Court: Objection sustained.

666 Q. I don't recall whether I asked you in 1915, did you sell two days before the holidays less than the market price during that same season? A. No, sir.

Q. Not one? A. Maybe I gave one present; I could not say not one.

Q. I did not ask you about a present. A. Maybe a poor man came in and said he cannot afford to pay more than \$2; I gave him for \$2.

Q. Did you sell in the market two days before the holidays for less than your market price, sets, prior thereto? A. No.

Q. Were there Jewish demonstrations before your store before that time? A. Yes, sir.

*Plaintiff's Witness, Sundel Saland, Re-cross*

667

Q. By Jewish communities and the Jewish public, on the ground that you were exacting of those very poor people exorbitant prices—were there such demonstrations? A. I can answer it. It was, but not in the way you say to me.

Q. Explain it. A. The Hebrew Publishing Company hired people, I have proof of it, to stand right in front of my door—

Mr. Miller: I object to the statement that he has proof of it.

The Court: I will strike it out.

Mr. Miller: I move to strike out that he has proof of that fact.

668

The Court: Motion granted.

The Witness: They hired people. I, myself, and I have two witnesses—

By the Court:

Q. Did you hear them hiring people? A. No.

The Court: I will strike it out.

Q. Can you tell whether there were riots there on the ground that you were asking exorbitant prices; did the people yell out you were asking exorbitant prices? A. It happened years ago when the Hebrew Publishing Company—

669

Mr. Miller: I move to strike it out.

The Court: Motion granted.

Q. At that time were there riots in front of your building, when the people shouted or stated to you that they objected on the ground that your prices were exorbitant? A. It was—

Mr. Fried: I object on the ground your Honor excluded the testimony that I originally

670 *Plaintiff's Witness, Sundel Saland, Re-cross*

offered of the wagon and the sign that continually passed up and down.

The Court: Objection overruled.

Mr. Fried: Exception.

A. It was.

By Mr. Fried:

Q. Now, Mr. Saland, how many citrons were sold in the market during the year 1914? A. Between thirty-five and forty thousand.

671 Q. In 1914 how many citrons did you have? A. About thirteen thousand.

Q. How many did Mr. Goldberg have? A. I don't know exactly Mr. Goldberg's figures, but we were not together at that time.

Q. How many, about?

Mr. Miller: I object.

By the Court:

Q. State of your own knowledge how many? A. About 10,000.

By Mr. Fried:

672 Q. How many did Mr. Cutler have? A. About nine or ten thousand.

Q. All sold? A. No, they remained with a couple of thousand, Mr. Goldberg and Mr. Cutler, and there were some other importers.

Q. How many other importers were there at the time? A. Mr. Atkin and Mr. Steinvitch, I don't remember, a few more. Some Hungarian men about three or four.

Q. How many were imported in that year 1914, how many were there on the market? A. About forty thousand.

Q. In 1915, how many were there? A. Twenty-one thousand, and only the goods ones, eighteen thousand.

Q. That was all there was in the market? A. Yes; and including what I had from Palestine and what the Mizrochi had.

Q. In 1916, the week before the holidays, how many did you sell? A. About twelve or thirteen thousand.

Q. The last week of the holidays? A. Yes; I could not say exactly; it is very hard to say the figures.

Q. During the last week of the holidays did a wagon pass up and down in front of your store? A. Yes, sir; from the day after the paper, it was on the 19th of September, the wagon was passing up and down all the time. 674

Mr. Miller: I object to that.

The Court: Overruled.

Mr. Miller: Exception.

By the Court:

Q. When were these riots you were speaking about, at what time? A. The last couple of days.

Q. You mean the 20th and 21st? A. The 21st and the 20th. 675

Q. You told me the 22nd? A. The 22nd was the day before the holiday, that is the retail trade.

Q. When did the holiday begin? A. On the evening of the 22nd.

Q. Was it Tuesday or Wednesday? A. The holiday was Thursday and the day before the holiday was Wednesday evening.

By Mr. Fried:

Q. I show you this paper and ask you whether this is an exact copy of what was on the sign on

676 *Plaintiff's Witness, Sundel Saland, Re-cross*

the wagon? A. (Witness examines the paper handed him by counsel.) Yes, sir; it is.

Mr. Fried: I offer it in evidence.

Mr. Miller: I object.

Q. Did you take a look at the wagon under the sign? A. Yes, I did.

Q. What was on it? A. "Hebrew Publishing Company."

677 Mr. Miller: I object to it on the ground it is incompetent, irrelevant and immaterial. Objection overruled.

Mr. Miller: Exception.

Q. What was under the sign? A. "Hebrew Publishing Company, 50 and 52 Eldridge Street."

Mr. Fried: I offer this in evidence.

Mr. Miller: I object.

The Court: Objection overruled.

Mr. Miller: Exception.

Received in evidence and marked Plaintiff's Exhibit 24.

By the Court:

678 Q. Can you read this for us, Mr. Saland? A. "No Palestine citrons this year in the United States, only a little amount which were sent by mail, and of Korfu citron it is not allowed to make a blessing." This was given out by twenty rabbis from the Union Rabbis, 15th of September, 1915.

By Mr. Fried:

Q. How many times did that wagon pass up and down in front of your store? A. All day long of the 19th or 20th, and not only my store, but all over the East Side.

*Plaintiff's Witness, Sundel Saland, Re-cross*

679

Q. Of all your agents and dealers? A. Of all my agents and dealers, and we want to stop him, to take a photograph—

Mr. Miller: I object.

The Court: Objection sustained.

Q. Are those the days you do the retail business on the last few days? A. Yes. And these days I do also, because the beginning of the two days, the customers is buying yet, if he sells a little stock he comes to buy more, but this killed my trade, and I could not sell any more.

680

Mr. Miller: I object to that, and I move to strike it out.

The Court: Motion granted.

Q. I will show you this circular. Were these distributed from the wagon?

The Court: Unless you are going to prove that the Hebrew Publishing Company had something to do with it after his statement that it affected his sales, it will cut out from the attention of the jury that the falling off of the sales was caused by the Hebrew Publishing Company's alleged libelous article.

681

Mr. Fried: Your Honor will see I cannot allow a thing like that to pass. We want to show the cause of those riots and the ownership of the wagon.

The Court: If you can prove it it will show malice, and I will allow the proof, but you will have to prove it, not a mere statement that it was on the wagon.

Mr. Fried: The name was on the wagon.

The Court: That does not prove the defendant was responsible for it.

682 *Plaintiff's Witness, Sundel Saland, Re-cross*

Mr. Fried: I will bring it home to them. We have other evidence beside the name on the wagon to connect that. The question is withdrawn about the circular.

Q. The citrons that you had and that you sold, seventy-five per cent of those citrons, during the year 1915, the Greek citrons, were sold to rabbis, were not they? A. Yes, sir.

Q. All over the country? A. Yes.

Q. East and west? A. East and west and south, and even in Canada, too.

683

By the Court:

Q. What proportion of your citrons do you usually sell to rabbis? A. In previous years, and a smaller proportion to rabbis than dealers.

Q. What is that? A. In normal years a smaller proportion to rabbis than to dealers. It is more selling to dealers than to rabbis; but this year it was a bigger proportion.

By Mr. Fried:

Q. During the year 1915 various dealers, what was the proportion of their order compared with other years? A. Most of them was about half and a third.

684 Q. Half and a third of normal years? A. Half and a third of normal years.

By Mr. Miller:

Q. In 1915, did you notice the advertisement in the "Morning Journal" of September 8th, 1915, of Lieb Cutler, just above yours, which is in evidence, marked Defendant's Exhibit C? A. I have to read it.

Q. Do you see it? A. Yes.

Q. You saw the other one above, your agent? A. Yes.

Q. Why is it that you permitted your partner to advertise from No. 5 Ludlow Street to the Jewish public, and you yourself from 41 Canal Street, and your agent from 203 East Broadway, when the whole transaction was one?

Mr. Fried: I object to that as already asked five times and answered.

The Court: Objection sustained.

Mr. Miller: Exception.

Q. Didn't you put that in in order to have the Jewish public think that each and every one of these mentioned are separate and independent? 686

Mr. Fried: I object on the ground it has already been asked and answered.

The Court: Objection overruled.

A. Every one has his customers and every one appeals to his customers.

Mr. Miller: I move to strike that out.

Q. Didn't you permit that to be put in the papers for the purpose of making the Jewish people believe that Mr. Goldberg and Mr. Cutler are independent, each for himself, and has nothing to do with the other, and the same in regard to T. Goldberg, wasn't that the cause and the reason? A. No. 687

By Mr. Fried:

Q. What was the reason? A. The reason is that every one has his customers and they have confidence, every one, in his customers, where he is dealing.

Q. Isn't it a fact that they were all dealing independently in former years, and wanted to keep up their representation amongst the Jewish people? A. Mr. Cutler paid these bills separately; I did not figure it out in the expense.



688 *Defendant's Witness, Benjamin Waxelbaum, Direct*

Q. Is this the letter you received from Rabbi Rap-  
paport? A. Yes (witness examines the paper handed  
him by counsel).

Mr. Fried: I offer this in evidence.

Received in evidence and marked Plaintiff's  
Exhibit 25.

Q. Can you read that?

Mr. Miller: I object on the ground he is  
not a translator.

Mr. Fried: I will offer the translation.

689

Mr. Miller: I ask to be allowed to put on  
the advertising man of the "Morning Journal,"  
to show he paid for the advertisement.

BENJAMIN WAXELBAUM, called as a witness  
in behalf of the defendant, being first duly sworn,  
testified as follows:

*Direct-examination by Mr. Miller:*

Q. You are connected with the "Jewish Morning  
Journal"? A. Yes.

690

Q. You have been connected with the "Morning  
Journal" on September 8th, 1915? A. Yes.

Q. I show you this article and ask you to tell us  
is this a paid advertisement, or has it been a paid  
advertisement?

Mr. Fried: I object unless they show it had  
been paid.

A. Yes; that is paid advertising.

Q. By whom was it paid?

Mr. Fried: I object.

*Defendant's Witness, Benjamin Waxelbaum, Direct* 691

By the Court:

Q. Do you know of your own knowledge, did you receive the money? A. Yes, sir.

Q. You received the money yourself? A. Yes.

Q. From whom did you receive it? A. This advertisement was included in the bill paid for by Mr. Sundel Saland.

Q. You made out a bill? A. I made out a bill, and I have a duplicate of it. It was mentioned in the subpoena that I should bring along the records.

By Mr. Miller:

692

Q. You received payment for it? A. Received payment for this advertisement.

Q. From Mr. Saland personally? A. I don't know, we got a check for it and this advertisement was included in the statement.

Mr. Miller: I offer this in evidence.

Mr. Fried: I object to it.

By the Court:

Q. What is there about that article that shows it is a paid advertisement? A. There is a heading on it, "Esrogim," just the same as the paper would say "Horses and Carriages."

693

Q. That line there (indicating)? A. Yes, and the reading matter is never printed in this type. It is display advertising.

Mr. Miller: I offer it in evidence.

Mr. Fried: I object.

The Court: Overruled.

Received in evidence and marked Defendant's Exhibit H.

Mr. Miller: I have a translation. Will you concede it.

694 *Defendant's Witness, Benjamin Waxelbaum, Cross*

Mr. Fried: No, I won't concede it any more than you would concede mine.

Mr. Miller: That is all.

*CROSS-EXAMINATION by Mr. Fried:*

Q. Have you got your records here and books to show how much money was collected from Mr. Saland for advertising? A. The book is a very large book.

Q. Have you got it with you? A. Yes.

Q. Let me see it?

695 (Witness produces a paper and hands to counsel.)

Q. How do you identify this to be the article? A. If you will let me see the paper?

Q. Yes, take a look at it? A. I mean the newspaper in which it appeared. The bill calls for a sixteen inch reading advertisement. If you will look through the paper you will find this is the only sixteen inch reading advertisement about esrogim in this issue.

Q. That is the article? A. Yes, in the bill.

696 Q. How much was the total amount of the advertisement of the bill? A. The amount is on the bill there.

Q. How much? A. \$308.

Q. How many items of advertising are there? A. 22 insertions of an advertisement.

By Juror No. 11:

Q. Who made up the advertisement? A. I don't know.

Q. Did you receive a copy of the advertisement as it appears in the paper? A. Not all advertising that comes to our office, comes through my hands, before it goes to the paper. Some comes in between five and

*Defendant's Witness, Benjamin Waxelbaum, Cross* 697

eleven at night and that is handled by the editorial department.

Q. Do you know whether or not Mr. Saland had what appears in that paper written by himself or by one in authority from him? A. I don't know who wrote it.

By Mr. Fried:

Q. Isn't it a fact that when a man inserts an article in your paper, advertising, that you also write up an editorial with reference to the subject on which he advertises? A. We do not.

698

Q. You are sure about that? A. Positive.

Q. You never do that, do you? A. No. If we give a man an article, if we get so much advertising from a clothing store, that there is a special sale, we may give a small item of news printed in the same type as news and marked at the end advertising, that small notice is considered by the Government as paid advertising and we have to mark it advertising. It is a rule of the post office.

Q. Don't you also when a man patronizes you considerably in advertising, and asks you for a write-up, would not your paper do that? A. No, sir.

Q. You would never do that? A. No, sir, we do not.

699

Q. That is free, I mean, you just write up the subject in case he should ask you?

Mr. Miller: He says they don't do it.

Q. I mean free, would not you write up a free editorial for any person, for any one of your advertisers? A. No, sir, we do not.

By Juror No. 4:

Q. Do you have anything called publicity, free publicity for advertisers? A. We do not give them any

700 *Defendant's Witness, Benjamin Waxelbaum, Re-direct*

free publicity. If an advertisement contains news value we give it a small news item and mark it at the end "Adv." to call attention in the small news item, to call attention to the advertisement on another page.

By Mr. Fried:

Q. Do you charge for that? A. We do not, but it is written in the shape of the paper used in the news part.

701 Q. That is your news part? A. To please the advertiser usually if the advertiser asks for it we refuse it, but we do it without being asked.

Q. You do that as a favor? A. Yes.

By the Court:

Q. You say you have the "Adv." after every one of those articles? A. Yes, sir.

By Mr. Fried:

Q. Is there an "Adv." on this article of September 8th? A. There is a heading we do not need "Adv." after it.

702 Q. Are not all paid articles marked "Adv."? A. No, not if it is an advertisement on the face of it.

Q. Does not this look the same as the other advertisement—is not this in advertising space in advertising form or is it in column form? A. We never print—

Q. Isn't this— A. This is single column.

Q. It resembles the next column exactly? A. No, the type is three times as large.

*RE-DIRECT EXAMINATION by Mr. Miller:*

Q. You mean when you say the type is so much larger you mean the headline? A. I mean the entire body of the advertisement.

*Plaintiff's Witness, Aaron S. Bock, Direct*

703

Mr. Miller: I offer in evidence the bill produced by the witness.

The Court: The whole testimony would be incompetent if it was objected to.

Mr. Miller: I withdraw it then.

AARON S. BOCK, called as a witness in behalf of the plaintiff, being first duly sworn, testifies as follows:

(Through the official interpreter.)

704

*Direct-examination, by Mr. Fried:*

Q. Are you a citron dealer? A. Yes.

Q. How long have you been a citron dealer? A. Forty-six years.

Q. How long have you been dealing with citrons in this country? A. Twenty-four years.

Q. Are you acquainted with all the citron dealers in this city? A. Yes.

Q. Did you know what citrons there were in the market in the year 1915? A. Yes.

Q. In 1915 who were the people that imported citrons? A. Sundel Saland and Lieb Cutler.

705

Q. Was there anybody else? A. Those were the two that had imported them and there was a Greek who brought them over from Greece.

Q. And the only citrons that were on the market were those from Saland and Cutler?

Mr. Miller: Objected to on the ground he cannot answer those were the only citrons in the market.

The Court: He said there were only two Greeks.

706

*Plaintiff's Witness, Aaron S. Bock, Direct*

Q. What was there one Greek or two Greeks? A. One Greek.

Q. Those were the thousand citrons that he had? A. He had then original casks which amounted to about 1,000.

Q. Is that the thousand that Mr. Saland bought, do you know? A. Yes.

Q. How many citrons are usually used in this country every year? A. Not every year alike.

Q. How much about? A. Forty or forty-five thousand or thirty-five thousand, according to the price.

707 Q. How many did you buy in 1915? A. I bought one thousand of Saland and 300 of Cutler.

Q. How many did you use? A. 435.

Q. What did you do with the balance?

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception.

A. I returned it back to Saland after the wagon was in front of my store with the description that those goods should not be bought, the customers would not take them and I returned them to Mr. Saland.

708

Mr. Miller: I object to that and move to strike it out as incompetent, irrelevant and immaterial and not within the issues.

The Court: Motion granted.

Mr. Fried: I will connect that wagon.

The Court: Even if you do connect it, while it might show malice, it is not as to the damage. It would help the defendant to leave it in, but I will strike it out on his motion.

Q. After the advertising of September 14th and 15th appeared, did it affect the sale of your citrons?

Mr. Miller: I object to that on the same ground.

*Plaintiff's Witness, Aaron S. Bock, Direct*

709

The Court: Objection overruled.

Mr. Miller: Exception.

The Court: We are speaking of the advertisement in the "Wahrheit" and the "Morning Journal" and the "Day." I will sustain the objection. You will have to specify which advertisement.

Q. Did you see the article with reference to Mr. Saland signed by the Hebrew Publishing Company in the "Wahrheit," the "Day" or the "Jewish Morning Journal"?

, 10

Mr. Miller: I object to that unless they show him the article.

Q. Did you read an article signed by the Hebrew Publishing Company?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Miller: Exception.

A. Yes.

Q. After that article—

The Court: You will have to show him the article.

711

Q. Here is the Jewish Morning Journal Exhibit No. 14. Did you read that article? A. Yes, I read it and everybody else that came in the store they had the paper open and everybody read it.

Q. Did it affect your sales of any citrons?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial and not a proper proof and a proper way of proving damage.

The Court: Objection sustained as to the form of the question.



712

*Plaintiff's Witness, Aaron S. Bock, Direct*

Q. When did you return the balance of the citrons? A. After the holidays.

Q. Did you try to sell them before the holidays? The week before the holidays? A. Yes, I stood there to the last moment and the very evening of the last day I tried to sell them.

Q. Where was your store? A. 110 Attorney Street, corner of Rivington.

Q. You opened that store purposely for the sale of citrons, exclusively? A. Only citrons.

713

Q. After those people came in with those papers did the sales increase or become less? A. Nearly nothing, almost nothing. A little, some people came in and they picked out some few citrons, others two and one citron, and after the price was made out and while they were in the store those other people came in with the papers open, the article stating that the citrons came from Korfu, they left them laying and they refused to accept.

Q. Your business is retail? A. Yes.

Q. For how long did you take your store?

Mr. Miller: I object.

The Court: Sustained.

714

Mr. Miller: Is your Honor going to permit the plaintiff to prove what this witness was damaged.

The Court: I have sustained the objection to that question.

Mr. Fried: Exception.

Q. How many citrons did you sell in 1914? A. Between fifteen and sixteen hundred.

Q. 1915, how many did you sell? A. 435.

Q. How many did you sell in 1915? A. Over one thousand.

*Plaintiff's Witness, Aaron S. Bock, Cross*

715

*CROSS-EXAMINATION by Mr. Miller:*

Q. Did you ever buy any citrons from other than Mr. Saland or Mr. Cutler in your experience? A. Yes.

Q. Did you buy from a number of citron dealers other than those two you have mentioned? A. I myself went on three occasions from here to Triest to buy the Greek goods and on one occasion I went to Jaffa, Palestine, to buy goods.

Q. Did you ever know or hear in your business experience in dealing with citrons that there was such things as a proclamation issued in 1891 by several rabbis placing a ban upon such citrons that come from Korfu or any other place in Greece? A. No.

716

Q. You never heard of it? A. No.

Q. Do you use citrons yourself during the Jewish Festival of Tabernacles? A. One.

Q. Have you ever heard that at least a preference had been made by the Jewish communities over Greek citrons, that is that the Jews were instructed whenever they could, at least, to buy citrons coming from Palestine? A. No, the Jews expect only a good, clean citron. It may come from any place at will, as long as it is good and the money is paid for it.

717

Q. That is also your belief? A. I myself and my personal use take a nice citron because it is a nice one.

Q. You use it only because it is nice? A. The Talmud says—

Q. Did you ever hear that even in planting citrons in the country of Greece that there was a suspicion prevailing as early as 1891 that citrons were grafted together with other roots or lemons? A. No.

Q. The one that you buy and use yourself, does it make any difference to you as long as it appears nice on its face whether it was grafted with any

718 *Plaintiff's Witness, Aaron S. Bock, Cross*

lemon or other fruit? A. If it would be planted and grafted in this manner it would make a difference but I myself was in Greece and I saw—

Mr. Miller: I object.

The Court: Strike it out.

The Witness: It would be a difference.

Q. Could you tell yourself upon looking at the appearance of a nice citron whether it had ever been grafted with other fruit? A. This you cannot do. It cannot be done.

719 Q. In view of that would not you rather rely whenever you could upon buying and using a citron coming from Palestine—

The Court: What do you mean?

Mr. Miller: I withdraw the question.

Q. Would not you rather prefer yourself to use a citron coming from Palestine than one coming from Greece?

Mr. Fried: I object to that on the ground he has already answered it.

The Court: Sustained.

720 Q. Are you a citron dealer now? A. During the season, at the present time there are no citron dealers.

Q. Did you ever hear of a Chief Rabbi by the name of Isaac Elchanin, in your life? A. The name, yes.

Q. How old are you? A. Sixty-eight years of age.

Q. Where do you come from, Russia? A. From Bukowina, Austria.

Q. Did you hear of him while you were there?

Mr. Fried: I think we have had the experts here and I object to this.

*Plaintiff's Witness, Aaron S. Bock, Cross*

721

The Court: Objection sustained.

Q. If you assume you were apprised that Rabbi Isaac Elchanin in conjunction with Rabbi Jacob Joseph, chief rabbi here, at one time, and with a number of other rabbis had issued a proclamation as early as 1891 in view of Jewish anti-demonstrations that occurred during that time in Korfu and out of sentimental reasons, would you have refused to use a citron if you could not have gotten one from Palestine?

Mr. Fried: I object to that.

722

The Court: Sustained.

Mr. Miller: Exception.

Q. Are you a friend of Mr. Saland? A. A business friend.

Q. How many years has this continued, your business relations with Mr. Saland? A. Since I ceased traveling abroad, and that is ten or eleven years.

Q. Have you been consulted or approached by either Mr. Saland or Mr. Cutler before you came here into court, about what you were going to testify? A. They gave me a subpoena that I should appear in court.

Q. Is that all? A. Yes.

723

Q. Nothing else? A. They spoke, there was a conversation but I cannot recall what the conversation was about.

Q. Was it about these citrons in question here? A. No.

Q. You came here to testify about these sales and these losses without ever having told it to Mr. Saland or Mr. Cutler before you took the stand here in court? A. I swore to say the truth and I do say what I know. I am testifying.

Q. You said in 1914 you bought your citrons from Mr. Saland and also from Mr. Cutler? A. Yes.

724 *Plaintiff's Witness, Aaron S. Bock, Cross*

Q. How much was it? A. It was about fifteen or sixteen hundred, precisely I cannot state.

Q. Did you buy it wholesale? A. Certainly if I buy a quantity it means wholesale.

Q. How much did you pay for it? A. The Palestine citrons I think that I paid \$1.05.

Q. How much did you pay for the Greek citrons? A. The Greek citrons? \$1.60 or \$1.50, I can't remember that correctly. Then there was a quality which is a better quality, for which I had paid \$2.

725 Q. When you say that you paid \$1.50 or \$1.60 did you pay that for a commonly good citron or was it a separate quality? A. I bought them in a case and in those cases where there are a hundred to a case there are different ones.

Q. Did you buy citrons or the lulof complete? A. The whole set, citrons, lulof and myrtles.

Q. Did you ever buy a citron alone? A. Very little, if I had any quantity of lulof I perhaps bought citrons only.

Q. Was there a market for the sale of citrons alone? A. Very little.

Q. What was a citron worth irrespective of the lulof, in 1914? A. I cannot recall.

726 Q. In 1914 how many citrons did you have from Palestine and how many Greek citrons? A. I cannot recall exactly, but approximately I had about five hundred citrons from Palestine which I bought from Mr. Cutler and about one thousand citrons which I bought from Mr. Saland, those are the Greek citrons.

Q. Were not you paid at that time more for the citrons coming from Palestine than the citrons that came from Greece? A. Never. For a Greek citron always more.

Q. Was the lulof in conjunction with the citron of the same character or nature, or quality, compared with the Palestine citrons, and the Greek citron—were the lulavim the same kind.

*Plaintiff's Witness, Aaron S. Bock, Cross*

727

Mr. Fried: I object.

The Court: Objection overruled.

A. From Palestine with the citrons there are no lulavim. From the Italian lulavim come. The lulavim that come from Italy come at present from California.

Q. You say that in 1915 you had a stock of citrons, all Greek citrons? A. Yes.

Q. You bought it all from Mr. Saland? A. Yes.

Q. When did you start to sell the citrons to the Jewish public? A. A few days after the Hebrew New Year.

728

The Court: That is the 9th of September.

Q. How many days after the 9th day of September was the first day of the new year did you commence to sell the citrons? A. Two days before Yom Kippur, before the Day of Atonement.

The Court: Yom Kippur was the 18th of September.

Q. That makes it the 16th of September and at that time you had with you a stock of how many citrons? A. About three hundred.

729

Q. From the 16th of September up to the day that you say that the people had appeared at your store with certain Jewish issues in their hands, how many had you sold out of that lot? A. The three hundred I sold them all.

Q. Three hundred of the whole that you had? A. The first three hundred I sold the entire stock and then I got three hundred more and then after the appearance of the wagon I sold 135 and that was all.

Q. So you had been left with how many? A. I had 165 left of those three hundred. I had four hun-

730

*Plaintiff's Witness, Aaron S. Bock, Cross*

dred left that were with Saland and were bought of Saland and three cases from Mr. Cutler, about three hundred, there were three cases.

Q. When you speak of cases do you know how many citrons go in a case? A. Yes.

Q. How many citrons go in a case? A. It depends on the size of the citron. Some of those cases contain as much as ten. There are others that contain one hundred, ninety and eighty-eight, as low as eighty-eight.

Q. Is 110 the most in a case? A. I had also 126.

731

Q. Those are large cases? A. The same size.

Q. Did you ever have any more in a case than 126? A. This I don't remember.

Q. The size of the cases, your cases are all alike? A. To the appearance of the eye they are all alike. Regarding measurements, I never had measured them.

Q. Those citrons that you have just testified to that remained with Mr. Saland, did you order those? A. I bought them.

Q. When did you order them? A. I had ordered them from him prior to his departure.

Q. Did you make up a price with him? A. No.

732

Q. The order with the partner of his, was that in the same way? A. Yes.

Q. Did Mr. Cutler also depart at the same time?

Mr. Fried: I object to that as improper.  
The Court: Overruled.

A. About the same time, but there was a difference of eight days, that is they went away within eight days, who went first and who second I don't remember.

Q. When do you say you gave them notice of cancelling the orders, if any? A. At the time when the wagon appeared in front of my door after Yom Kippur, the Day of Atonement, and after those people

had selected purchases and refused to take them, then I went over to Mr. Saland and I told him, "Take those goods back."

Q. Then you cancelled the order long before you saw this article in the Jewish papers, one day after Yom Kippur?

Mr. Fried: I object.

Mr. Miller: I withdraw it.

Q. Which is it, did you cancel the order because of what you saw on that sign that you have testified to that appeared upon the truck or did you cancel the order because of this article that you read in the newspapers? A. Both struck me a blow simultaneously.

734

Q. You say after Yom Kippur. I have told you that Yom Kippur fell on the 18th of September. How many days after did this occur? A. The very day after Yom Kippur.

Q. That is the 19th of September? A. I don't recall the date.

Q. Do you recall the date when you read this article in the Jewish paper? A. No.

Q. You don't remember that? A. No.

Q. You say you saw on the 14th this article that you have referred to coming from the Hebrew Publishing Company? A. Yes, it was brought in to me, the issue and I read it, everybody else read it, but I don't recall the date.

735

Q. Did you also in the same paper at the same time see the article marked Defendant's Exhibit F? A. I can't remember.

Q. Did you read the article in the morning "Journal" of September 15th, an article appearing therein signed by twenty-one rabbis?

Mr. Fried: I object to reading the article unless he shows him the article.



736

*Plaintiff's Witness, Aaron S. Bock, Cross*

The Court: Objection overruled.

Mr. Fried: Exception.

Q. Who instructed and directed the Jewish community not to pronounce a benediction upon any other citron than Palestine citrons?

Mr. Fried: I ask to strike that out and I state that that is misquoted, that the article is misquoted.

The Court: I will strike it out.

By the Court:

737

Q. Did you see that article? A. I don't remember.

By Mr. Miller:

Q. You do remember, however, and you are positive of it, that you read the article that appeared in the very papers that came from the Hebrew Publishing Company? A. Yes, because the people brought the paper inside the store and made a whole lot of noise about it.

738

Q. Didn't they make a whole lot of noise about it and didn't they tell you also the cause of this injunction signed by twenty odd rabbis concerning the use of citrons?

Mr. Fried: I object to a reference to the prohibition because the article is not in evidence and it really does not show against what citrons the prohibition is.

The Court: Objection overruled.

Mr. Fried: Exception.

A. No.

*Plaintiff's Witness, Aaron S. Bock, Re-direct, Re-cross* 739

*RE-DIRECT EXAMINATION by Mr. Fried:*

Q. What do you understand from having been a dealer and from your experience by Triest citrons?

A. Triest itself has no citrons. Triest is a port, a commercial port, where all the citrons from Greece come to Triest.

Q. You said that you were in Greece and you saw the gardens where the citrons grow, is that right?

A. Yes.

Q. Could you recognize if you saw a citron whether it was grafted or not?

740

Mr. Miller: I object.

The Court: Sustained.

Q. Do you know whether the Greek citron trees are grafted?

Mr. Miller: I object.

The Court: Sustained.

*RE-CROSS EXAMINATION by Mr. Miller:*

Q. You say that Triest was a market for Greek citrons? A. Yes, I remember in my experience of forty-six years that Triest is the market for those Greek citrons.

741

Q. Did you ever hear or know of any sale of Palestine citrons upon the same market as Triest?

A. Very little, it was only occasionally if somebody would go to Palestine and buy a whole lot of citrons and he would come and stop over at Triest he would sell sometimes. I did it myself.

Q. Do you know whether or not citrons are also planted and sold in Italy? A. Very little.

Q. Do you know whether or not citrons are planted and sold in this country coming from California? A. Yes.

742 *Plaintiff's Witness, Louis Cutler, Direct*

Q. And also at Alexandria, Egypt? A. No. No citrons in Alexandria, only palms in Alexandria.

Q. Do you know of any other place than those you have mentioned in Turkey where citrons are planted and sold outside of Palestine? A. There is a place in Morocco.

Recess to two o'clock.

743 Afternoon session.

Mr. Fried: I will consent to this translation by the defendant.

Mr. Miller: I offer it in evidence.

Received in evidence and marked Plaintiff's Exhibit 26.

(Mr. Miller reads Plaintiff's Exhibit 26 to the jury.)

A Juror: Your Honor, may I inquire was that paid for.

744 The Court: As I remember it the plaintiff's testimony was he had seen a reporter from the paper and had given him an interview, not exactly in that form, but had asked him to write it out and that this article thereafter appeared and he paid for this article.

Mr. Miller: There was one he denied and one he admitted.

The Court: This is the one he admitted.

LOUIS CUTLER, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows, through the official interpreter.

*Direct-examination by Mr. Fried:*

Q. Where do you live? A. Beverly, Massachusetts.

*Plaintiff's Witness, Louis Cutler, Direct*

745

Q. What is your business? A. My business is that of selling citrons.

Q. How long have you been in that business? A. Over twenty years.

Q. For how long are you in this country? A. In May will be ten years.

Q. In 1915 did you go to Greece? A. Yes.

Q. What time of the year? A. During the month of July or June.

Q. What part of Greece did you go to? A. Piraeus.

Q. What did you do at Piraeus? A. From Piraeus I went to Alexandria.

746

Q. What did you do at Alexandria? A. I went to Alexandria in order to purchase some citrons that came from Palestine.

Q. Did you get any Palestine citrons? A. No, I was not permitted to proceed any farther than Alexandria.

Q. You wanted to go to Joppa? A. Yes.

Q. Then what did you do after that? A. While I could not go any farther I was still looking, trying to purchase some citrons and then my son's partner from Russia arrived to Alexandria, he came to see me and I asked him—

The Court: Don't state what was said.

747

Mr. Miller: I object to it.

The Court: Objection sustained.

Q. Did you afterward from Alexandria go back to Piraeus? A. Then I went back with him together to Piraeus.

Q. What did you do at Piraeus? A. From Piraeus I went to Korfu.

Q. With whom did you go to Korfu? A. Two men from Russia and myself.

Q. What did you do when you arrived at Korfu? A. When I arrived at Korfu I went to see a rabbi, and

748 *Plaintiff's Witness, Louis Cutler, Direct*

I inquired of him whether there are any citrons there and he told me there were no citrons there.

Q. Then what did you do after that?

Mr. Miller: I object to this particular evidence, what this rabbi at Korfu advised him to do.

The Court: Objection sustained.

Q. What did you do? A. I went back to Piraeus.

Q. How long did you stay in Piraeus? A. Six days.

749 Q. In Korfu? A. Yes.

Q. What did you do there? A. I went around?

Mr. Miller: I object to what he did at Korfu.

The Court: Sustained.

Mr. Fried: Exception.

Q. Did you find any citrons at Korfu?

Mr. Miller: I object.

The Court: Overruled.

A. No, not one at all.

Q. And then where did you go from there? A. I went back to Piraeus.

750 Q. What did you do there? A. There I bought some citrons.

Q. How many citrons did you buy? A. Five thousand.

Q. What did you pay for them? A. It was about four francs a piece.

Q. How much is that in United States money? A. Eighty cents. At that time it was eighty cents.

Q. Where did you meet Mr. Saland? A. I saw him at Piraeus.

Q. Did you afterwards sell the citrons together with Mr. Saland? A. I did not know where he bought

*Plaintiff's Witness, Louis Cutler, Direct*

751

his goods and he did not know where I bought mine, but we were traveling going back on the steamer and then we told one another. After I spoke to him on the steamer and I told him about the price that I paid for the goods and he asked me how many I had and I told him I had 5,000, I asked him then how many he had and he told me he had fifteen thousand, which made twenty thousand altogether. He then told me he wanted to take them off me for the same price I paid for them. He said then to me, "I don't want to know anything, I will take mine and I will sell them at a dollar a piece, the 15,000 and you sell yours at a dollar a piece the 5,000 and if I sell one hundred citrons that will mean twenty-five yours and seventy-five mine, twenty-five per cent mine and seventy-five per cent his.

752

Q. Were there any other American citron dealers in Greece at that time?

Mr. Miller: I object.

The Court: Objection overruled.

Mr. Miller: I do not see how this witness can testify whether there were any others.

By the Court:

Q. Do you know all the dealers from America? A. Yes, I know them.

753

By Mr. Fried:

Q. During the year 1915, were there any other importers of citrons outside of yourself and Mr. Saland?

A. No one.

Q. Now, Mr. Cutler, do you know of the prohibition that appeared in the papers against citrons?

Mr. Miller: Object to the use of the word prohibition, if counsel means the alleged libelous article, I think he should so characterize it.

754

*Plaintiff's Witness, Louis Cutler, Cross*

The Court: Which do you refer to.

Mr. Fried: They call it a ban and I call it a prohibition.

The Court: Are you referring to what they refer to as a ban where the rabbis later—

Mr. Fried: Yes.

The Court: That is all right.

Q. Did you know of the prohibition that was issued against the citrons? A. I did not see it.

Q. Did you know that there were articles appearing in the papers against the citrons? A. Yes.

755

Q. Against what citrons were they?

Mr. Miller: I object to that.

The Court: Objection sustained.

Q. Were you sent for by the rabbis during September, 1915?

Mr. Miller: I object.

The Court: Sustained.

Q. During the years that you have been dealing in citrons what kind of a citron have you been dealing with? A. I dealt in the Palestine and the Greek citron.

756

Mr. Fried: That is all.

*CROSS-EXAMINATION by Mr. Miller:*

Q. You have been in partnership with Mr. Saland in the year 1915, in the business of selling citrons and lulavim in question in this trial? A. Only as far as that I had five thousand citrons which he was supposed to sell at any time he would make a sale of 100, twenty-five would be sold of mine.

Q. You were to share in the profits and losses of this enterprise? A. Only up to that far; after he

*Plaintiff's Witness, Louis Cutler, Cross*

757

sells his 20,000 that I would receive the money for my five thousand from every hundred that he would sell, twenty-five would be sold of mine.

Q. Don't you know the meaning of share in losses and profits in an enterprise? A. I know what it means but there was no partnership.

Q. If on that sale of the 20,000 citrons there was a loss were you to bear part of that loss? A. Sure, I would receive less.

Q. If there were a profit you would get your profit in the transaction? A. If there would be I would obtain a profit, yes.

758

Q. Do you always sell and deal in citrons in New York steady? A. Yes, every year since I am here, that is the last ten years.

Q. During all that time you have been living at Beverly, Mass.? A. No, up to four years ago I lived in Boston and after that I lived in Beverly.

Q. Did you read the paid advertisements that appeared in the "Jewish Daily News" on September 8th, 1915, which is marked Plaintiff's Exhibit and of which the translation was just read to the jury? (No response by the witness.)

By the Court:

Q. Did you ever read that before? A. I did not read it. I have no time to read it. I came here to sell goods, not to read papers.

759

By Mr. Miller:

Q. You had enough time to read on September 14th and September 15th an article that was published by the Hebrew Publishing Company? A. I will answer you to that, because when all my customers came into my place to buy citrons they told me that they would not buy them of me, that I had Korfu citrons and after I questioned them how they knew about it



760

*Plaintiff's Witness, Louis Cutler, Cross*

they told me that they read in the papers and they read to me the article.

Q. Did they also tell you there was an article in the paper signed by twenty odd rabbis prohibiting pronouncing a benediction upon any other citrons than Palestine? A. They did not tell me that.

By the Court:

761

Q. What did you answer when they told you they would not buy because you had Korfu citrons? A. I told them that they can send me to the rabbis and I would tell them I had no Korfu citrons.

By Mr. Miller:

Q. Do you know anything that happened to Mr. Saland upon this journey that he made in 1915 from the time he left New York until the time he returned? (No response by the witness.)

Mr. Miller: I withdraw the question.

762

Q. Did anything happen to you on your journey? A. I had difficulties. For eight days I was kept in Gibraltar, six days I was kept in Malta and then when I came to Piraeus they would not permit me to go with the ship to Alexandria and when I came to Alexandria I expected to go from there to Palestine, but I was not permitted.

Q. That is all? A. This is what happened. This is enough. Then I could not get any citrons and I had to go back without them.

Q. You came back without citrons altogether? A. From Alexandria to Piraeus when I came I did not get any citrons.

Q. Did you buy citrons at Piraeus when you returned from Alexandria? A. No, I went to Korfu.

Q. You bought 5,000? A. After I came back from Korfu.

Q. I did not ask you for your whole history? A. Yes.

Q. You testified you told Mr. Saland how much you paid for them? A. I want to relate to you how it was.

Q. Did you testify you told Mr. Saland how much you paid for them? A. I told him on the ship.

Q. Were you in court during the trial when Mr. Saland was on the witness stand? A. Yes, sure I was.

Q. Do you understand English? A. No.

Q. You understand what Mr. Saland testified about you? 764

Mr. Fried: I object.

The Court: Sustained.

Q. In 1914 how much did you sell your Greek citrons in the market for and how much did you sell Palestine citrons for, for how much a set? A. I had no Greek, I had only the Palestine goods and I was getting \$1.75 a set.

Q. Wholesale? A. Yes.

Q. How many did you have that year? A. Ten thousand.

Q. Did you dispose of the entire stock before the Hebrew holidays? A. No, there are some left, some that are spoiled, some that are decayed. 765

Q. How many out of that ten thousand remained? A. Between fifteen hundred and two thousand maybe.

Q. Did you sell them afterward? A. You sell them then, not for the religious usage, you sell them then to make preserves.

Q. Before the Hebrew holiday arrives just two or three days before—don't you usually sell cheaper if there any remains with you than the usual market price prior thereto?

766

*Plaintiff's Witness, Louis Cutler, Cross*

Mr. Fried: Object to that unless he confines him to time.

A. I sold them all for a price.

Q. You would rather take chances if any should remain over and dispose of them for preserves than lower your price?

Mr. Fried: I object to that as argumentative.

The Court: Sustained.

767 Q. In 1915 you had advertised as from No. 5 Ludlow Street? A. Yes.

Q. Although you had been then in partnership with Mr. Saland? A. May I tell you why?

Q. Yes or no? A. Because I wanted to have my customers that were mine to come to me and moreover I had not partnership of any kind.

Q. Did you keep separate accounts in separate books of the sales between you and Mr. Saland at that time? A. All in one.

Q. The same book? A. The same book.

Q. Did you trust your partner with the moneys that were collected upon the different sales?

768

Mr. Fried: I object.

The Court: Leave out the word partner.

Q. Isn't it a matter of fact that the reason that you had inserted a separate advertisement in your name at the entrance to No. 5 Ludlow Street and Mr. Saland inserted an advertisement in the same paper with an entrance on 41 Canal Street, was because you wanted the Jewish people to understand that you have nothing to do with one another?

Mr. Fried: I object to that.

The Court: Overruled.

Mr. Fried: Exception.

*Plaintiff's Witness, Louis Cutler, Cross*

769

A. I wanted all the customers to know me, all those people that bought those goods.

Mr. Miller: Move to strike that out.

The Court: Motion granted.

By the Court:

Q. Did you want the public to think you were two separate dealers? A. He had a place of business and I had a place of business but these citrons were all one.

Mr. Miller: Move to strike it out.

The Court: I will let it stand.

770

By Mr. Miller:

Q. The five thousand citrons you brought over you say it cost you eighty cents United States money, is that right? A. Yes.

Q. And you bought it in the same place where Mr. Saland bought his? A. He bought in another place. He did not know where I bought them and I did not know where he bought his.

Q. Did you buy it in the same place in Piraeus? A. In Piraeus.

Q. That is the same place where Mr. Saland bought his? A. There is where the market was.

771

Q. Do you know whether Mr. Saland also bought his 15,000 at Piraeus? A. Yes.

Q. Do you know that Mr. Saland had bought the same citrons there at a cost price of about sixty cents? A. I paid dearer.

Q. Didn't you and Mr. Saland combine together in conjunction as you say with the only other person in New York City, the agent by the name of T. Goldberg in order to control the market upon citrons for the year 1915?

772

*Plaintiff's Witness, Louis Cutler, Cross*

Mr. Fried: Object to the form of the question.

The Court: Sustained.

Mr. Miller: Exception.

773

Q. Did you ever suggest or propose, or did Mr. Saland ever suggest or propose to you to get together upon the citrons that you bought, that you brought over in 1915 from Pireaus, Greece, and to make a price when you both reached New York City and buy out the only other person in New York City, a Greek who had a thousand other citrons, in order to control the market upon citrons.

Mr. Fried: I object.

The Court: Sustained.

Mr. Miller: Exception.

Q. Why did you in the year 1915, enter into an agreement with Mr. Saland to sell the citrons together?

Mr. Fried: I object.

Mr. Miller: I want to show that in this very article it is claimed that a few of the dealers, a few of the citron dealers—

774

The Court: I realize it, but it was that they agreed they should circulate a report that citrons are scarce and very high prices, and also to ask a very extravagant price, I will allow it.

Q. Did not you and Mr. Saland and Mr. T. Goldberg who have claimed to be your agent, or Mr. Saland's agent get together and agree to sell the citrons from this particular corner of Canal Street and Ludlow Street and buy out the only other person in New York City, a Greek who had a thousand citrons, in order to place a price on which citrons for the use of the Jewish community should be sold.

*Plaintiff's Witness, Louis Cutler, Cross*

775

Mr. Fried: I object.

The Court: Overruled.

Mr. Fried: Exception.

A. No, I did it something like this. I want to explain to you the way the thing was. We were in one all agreed. On the ship I told to Saland that these things had cost me \$2.25 a set. That is to say, a citron, a palm leaf and a myrtle and he replied to me, "I don't want to know what they cost you." I said, "Well, this is all right," well, then he suggested that we should take out citrons, my 5,000 and his 15,000 and about Goldberg, I did not know, I have nothing to do, I did not speak with Goldberg, and that we should combine to sell them.

776

By the Court:

Q. Did you know at that time that Mr. Saland and you were the only people that had citrons in New York? A. There were no others only I and Mr. Saland.

Q. Did you know that on the steamer? A. Yes, and I also know that there were several cases coming to a Greek, ten cases.

By the Court:

777

Q. Did you discuss on the steamer buying out the Greek? A. No.

By Mr. Miller:

Q. Tell us now about the combination. You say you got together and you knew at that time on the steamer that you and Mr. Saland with the exception of this Greek, who had a thousand citrons only, were the only persons who had citrons at that time?

Mr. Fried: I object on the ground it has already been answered.

778

*Plaintiff's Witness, Louis Cutler, Cross*

The Court: Overruled.

Mr. Fried: Exception. I submit this witness has been made to answer this question at least a dozen times, and I object to it.

The Court: Overruled.

Mr. Fried: Exception.

Mr. Miller: I withdraw the question.

Q. Did you on the steamer while you were in the company of Mr. Saland, were not you and Mr. Saland and the Greek whom you met on the same steamer, who had a thousand citrons, were not you the only  
779 persons who had citrons at that time?

Mr. Fried: I object for the same reason, that the testimony is misquoted. He did not meet any Greek there.

The Court: I do not think there is any testimony that the Greek was on the steamer.

Q. Did you know whether or not there was a Greek on the same steamer who had citrons with him? A. No.

Q. What did you mean when you said there was something like a number of cases of citrons belonging to a Greek on the same steamer?

780

The Court: I think you misunderstood him.

Q. Did you know when you were on the steamer and when you made your combination with Mr. Saland that you two were the only persons that had citrons at that time?

Mr. Fried: I object to that on the ground it has already been answered.

The Court: It has been answered several times now.

Q. Those ten cases that you refer to, were they subsequently purchased, do you know, by Mr. Saland in New York? A. Yes, he bought them.

*Plaintiff's Witness, Louis Cutler, Cross*

781

By the Court:

Q. Did he buy them as a joint venture? A. A joint account, he bought them for both, he could not buy them otherwise.

By Mr. Miller:

Q. Do you know how much of the 21,000 citrons had been sold by Mr. Saland and you in the year of 1915? A. More than 8,000.

Q. What became of the balance? A. Some 9,000 remained and one could not sell them. Several thousand became decayed, some 3,000, and of the others, we thought we could still use them.

782

Q. You say that 8,000 you sold outright in the market? A. The whole of the time more than 8,000 were sold.

Q. How many were what you call defective? A. I can't remember, I did not count them.

Q. Were there more than a thousand out of the 21,000? A. More than a thousand.

Q. More than 1,500? A. I can't remember.

Q. Between a thousand and 1,500, do you think?

Mr. Fried: He says he can't remember.

The Court: Objection sustained.

783

The Witness: Some 3,000 were bad. One makes a calculation of so many defective every year.

Q. The balance you say you had stored in some refrigerator company? A. I saw that I had fallen into a misfortune with this business and I was out some four or five thousand dollars.

Mr. Miller: I move to strike it out.

Motion granted.

Q. How much did you sell in 1915, a complete set of citrons at wholesale? A. \$3.



784

*Plaintiff's Witness, Louis Cutler, Cross*

Q. That was the lowest? A. You could not sell them cheaper because they cost me \$2.25.

Mr. Miller: I move to strike it out.

The Court: Motion granted.

Q. Answer yes or no? A. I did not.

Q. In 1916, did you also deal in citrons, this last year? A. Yes.

Q. Did you bring over any citrons from Greece? A. Yes.

Q. Were you also in partnership with Mr. Saland?

785

Mr. Fried: I object to that as incompetent, irrelevant and immaterial, and not proper cross-examination.

The Court: Overruled.

Mr. Fried: Exception.

A. In the year, 1916, we had a partnership.

Q. How much did you together with Mr. Saland bring over to this country, how many citrons from Greece?

Mr. Fried: I object to that on the ground they are making him their own witness.

The Court: Overruled.

786

Mr. Fried: Exception.

A. 25,000.

Q. For how much did you sell a complete set, a citron and a lulof together? A. \$2.

Q. Did you remain over with any big stock of citrons, about two days before the holidays, again in 1916? A. No, not much.

Q. Did you dispose of the whole 25,000? A. Some have holes and would be rotten and unfit, and you might count off 3,000 there.

Q. All of them came from Greece in 1916? A. Yes, all of them.

*Plaintiff's Witness, Louis Cutler, Cross*

787

Juror No. 9: Your Honor, what is the average price per set, what has it been for five years previous to 1915?

The Court: I will ask it.

By the Court:

Q. What was the price in 1914, the wholesale price per set? A. \$1.75.

Q. Is that for a whole set? A. Yes.

Q. 1913? A. About that price, \$1.60 or \$1.75.

Q. Was that the regular price for some years back? A. That was the price when they were cheap.

783

Q. When were they expensive? A. In 1915 when there was a great demand from customers in Russia.

Q. What other years were they expensive? A. In 1916 they were cheaper than in 1915.

Q. In 1914, 1913, 1912 and 1911? A. They were all kind of prices. They were cheap then in Palestine, but one could not get them. They were ten cents then.

Q. What was the price over here? A. \$1.50, \$1.60 and \$1.75.

Q. Had you ever gone to Europe to buy these citrons before 1915? A. Every year.

Q. Where did you buy them in previous years? A. In 1914 at Jaffa, Palestine.

789

Q. 1913? A. Jaffa, Palestine, and in Triest, too, on my return, I bought some.

Q. How much did you buy in Triest in 1913? A. They would not give them to me without money payment in Triest, so I could not buy them.

Q. When did you buy last in Triest? A. 1913, and in 1914 I could not get them in Triest.

Q. In 1913, how much did you buy in Triest? A. I cannot remember—a couple of thousand.

Q. How many in Palestine did you buy? A. Six or seven thousand, I can't remember.

790

*Plaintiff's Witness, Louis Cutler, Cross*

Q. What were the names of the other dealers in New York in 1914? A. I and Saland and Goldberg.

Q. What others in 1914? A. Pitskofsk & Atkin, two partners had them and Sheinorvitch. Then there was a rabbi who had them also.

Q. Which dealers got Greek citrons and which dealers got Palestine citrons before 1914? A. I had them and Saland had them. More than that I don't know. I know that Goldberg and the others all had them.

791 Q. Did the dealers outside of Goldberg and yourself have any Greek citrons in the years before 1914? A. I don't remember; I don't know.

Q. Why did you go to Korfu to buy citrons in 1915? A. I arrived in Alexandria and then my son's partner came from Russia and he said, "Where are we going to get citrons?" That we did not know. That market was in Triest.

Q. Had you ever been in the Piraeus before? A. That was the first time I went to the Piraeus.

Q. Did you know at all where the citrons were grown outside of Palestine? A. Yes.

Q. Where? A. In Greece.

792 Q. Why didn't you try to buy them in Greece instead of going to Korfu? A. I had been in this business for twenty years and in Russia I also knew that there were Korfu citrons, and then I went there to Korfu, and my son's partner also went there to Korfu.

Q. Had you handled any Korfu citrons in this country during the last ten years? A. No, Triest, Greek citrons, not Korfu citrons.

Juror No. 4: Is it possible, your Honor, to find out whether credit conditions had anything to do with the purchase between Palestine and Triest?

*Plaintiff's Witness, Louis Cutler, Re-direct*

793

The Court: Some say there was no possibility of buying Palestine citrons.

Juror No. 4: He said something about not being able to get credit.

The Court: There is not any doubt that in 1915 Palestine citrons could not be obtained. You could not get anything from Palestine.

*RE-DIRECT EXAMINATION by Mr. Fried:*

Q. You started in to tell us about the conditions in the market when you came to Piraeus. Where did the merchants come from who were at Piraeus, when you came there? A. From Parga, from Kimora, and from Rapesa. 794

Q. From where did the buyers come, those who came to buy? A. I came from America, and Saland came from America, and there were buyers from Russia and from Salonica.

Q. Were there any from Austria? A. No.

Q. As soon as you came to Piraeus, did you find the other merchants buying goods and buying citrons?

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception. 795

A. When I came from Korfu, I met them there from Russia.

Q. Had the buyers already purchased their stock when you came there from Korfu?

Mr. Miller: I object.

The Court: Sustained.

Q. When you came back from Korfu, what did you do in the way of attempting to purchase citrons?

Mr. Miller: I object on the ground he has already given a history of that.

796 *Plaintiff's Witness, George F. Adair, Direct*

The Court: Objection overruled.

A. I saw the Greeks that were there and those that used to be in Triest were also in the Piraeus, and I bought from them.

Q. When you first came to Piraeus, is it a fact that you went to Korfu because you could not get citrons the first time you were in Piraeus?

Mr. Miller: I object to that on the ground he has already answered.

797 The Court: Sustained. You cannot ask questions to contradict what he has already testified to.

Q. What efforts did you make in Piraeus to purchase citrons before you went to Korfu? A. I had to go through Piraeus, I could not go otherwise.

By the Court:

Q. Did you try to buy anything in Piraeus before you went to Korfu? A. I did not try because I did not know who was there, I came there and immediately left.

798

DR. GEORGE F. ADAIR, called as a witness in behalf of the plaintiff, being first duly sworn, testifies as follows:

*Direct-examination by Mr. Fried:*

Q. Were you with Mr. Saland on the steamer at Salonica? A. Yes, sir, but we called it the "Thessalonica."

Q. Where did you board the steamer? A. Across the river, across the Hudson, I think at Jersey City.

Q. Were you in the same state room with Mr. Saland? A. Yes, sir.

*Plaintiff's Witness, Hyman Levene, Direct*

799

Q. On the whole trip? A. Yes, sir.

Q. Did you see Mr. Saland carry any gold with him?

Mr. Miller: I object to that.

The Court: Sustained.

Q. Did you land with him at Piraeus? A. I did.

Q. Were you detained at Gibraltar?

Mr. Miller: Objected to.

The Court: Sustained.

Q. What happened at Gibraltar?

800

Mr. Miller: I object.

The Court: Sustained.

HYMAN LEVENE, called as a witness in behalf of the plaintiff, being first duly affirmed, testifies as follows:

*Direct-examination by Mr. Fried:*

Q. Rabbi Levene, did you purchase citrons in the year 1915, from Mr. Saland? A. Yes.

Q. How long have you been dealing in citrons? A. Seventeen years. 801

Q. What kind of citrons have you been dealing in? A. Different every year, I have a part of this kind, and a part of that.

Q. A part of what? A. Triest and Palestine.

Q. What are the Triest citrons? A. They come from different places, Rapesa and Parga, I don't know the different places exactly.

Q. In 1915, how many citrons did you buy? A. I buy 1,100.

Q. Did you return any? A. About 380.

802

*Plaintiff's Witness Hyman Levene, Cross*

Q. On September 15th and September 14th, did you read the articles that came out from the Hebrew Publishing Company? A. Yes, sir.

Q. Did anyone bring them to your attention? A. No, I bought a paper and read it, and some people went in the store—

Q. You sell at retail? A. Yes.

Q. Did those articles affect the sales in your store? A. Positively.

803

Q. In what respect, in what way? A. Before I was selling about 400 and always I had a lot of customers and after the advertising it was very slow going on, the business, but I sold over 700.

**CROSS-EXAMINATION** by Mr. Miller:

Q. Are you a rabbi? A. Reverend.

Q. Connected with what congregation? A. 219 Madison Street, downtown.

Q. You are also a citron dealer? A. Yes, sir.

Q. Are you also an agent for Mr. Saland in the dealing of citrons? A. No, only one year.

Q. You had been an agent? A. Yes, only this year.

804

Q. 1915, this year? A. Yes, 1915.

Q. You were the agent in 1915? A. Yes, I took a commission.

By the Court:

Q. What year did you take a commission? A. 1915.

Q. You did not buy these from him, you took them on commission? A. I buy on this condition, in case they are very dear and very high, in case they shall be left, I shall give them back.

Q. When you bought them, you made that condition? A. Yes.

Q. When did you buy them? A. Before the time he went to buy them.

Q. Do you mean in June? A. About June, yes, before.

Q. You arranged with him that you would take them and pay him a commission for buying? A. No, he gave me the commission because it was dear and I was afraid to buy.

Q. Did you know in June they were expensive? A. Yes, on account of the war.

Q. You were afraid you would not be able to sell at that price, is that what you mean? A. Yes. 806

By Mr. Miller:

Q. So that in 1915, your business relation with Mr. Saland was a business agency, you had been a commission merchant for Mr. Saland? A. I took a guaranty for such and such an amount.

Q. A guaranteed salary? A. Yes, a guaranteed commission, but I must have such an amount.

Q. You tried to sell citrons for Mr. Saland at what address? A. In my store, No. 29 Canal Street.

Q. How many citrons did you get off him to sell in 1915? A. I took 1,100.

Q. When did you commence to sell them? A. Before the holidays. 807

Q. What day did you start? A. I can't remember that, exactly the time, but the whole business was about ten days only.

Q. Did you start to sell or offer for sale citrons before the 14th of September, 1915? A. Yes, sir, about the 11th or 10th, I don't know correctly.

Q. From the 10th up to the 14th, do you know how much you sold daily? A. No, the first day is very slow, going on the business, and four or five days, the less time is the more business.



808

*Plaintiff's Witness Hyman Levene, Cross*

Q. So that you did most of the business after the 14th and 15th? A. No, about the 13th, 14th and 15th, that is beginning on the business.

Q. That is only the beginning? A. Yes.

Q. So that the best part of the business you did after the 14th? A. About the 13th, the 14th and 15th, the 16th and 17th.

Q. You disposed of how many hundreds? A. I don't know.

Q. You had altogether, you said, 1,100? A. Yes, altogether.

909 Q. You disposed of over 700? A. Yes, in the whole time.

Q. What day was it that you noticed this alleged article of the Hebrew Publishing Company? A. I believe that was on the 14th.

Q. In what paper did you read it? A. I read all papers.

Q. Did you read also in the same day an editorial that appeared in the Wahrheit on the question of selling and purchasing citrons during that same time? A. Yes, sir.

810 Q. On the 14th, the very day you say you first noticed the article of the Hebrew Publishing Company, did you also notice in the Wahrheit an editorial, Defendant's Exhibit F?

(The witness examines the paper handed him by counsel.)

By the Court:

Q. Did you read that? A. Yes.

By Mr. Miller:

Q. Isn't it a fact that this Defendant's Exhibit F tended and did injure and hurt the sale of the citrons by you and Mr. Saland and Mr. Cutler, this very editorial? A. Please explain that.

*Plaintiff's Witness Hyman Levene, Cross*

811

Q. Would you say that this editorial marked Defendant's Exhibit F did not in any way hurt the business of the sale of citrons by you and Mr. Saland and Mr. Cutler? A. Yes.

Q. It did hurt? A. A little bit.

Q. Would not you say that this very editorial coming from the "Wahrheit" on that very day had a much more damaging effect upon the citrons you offered for sale than this alleged libelous article of the Hebrew Publishing Company after you read it? A. I don't know, I can't tell.

Q. You read it on that day? A. Yes.

812

Q. Compared with the article that you saw by the Hebrew Publishing Company, would not you say that this is a much damaging article than the one published by the Hebrew Publishing Company? A. I would like to say some words.

Q. Can you read it yourself? A. Yes.

Q. If you compare this article of the "Wahrheit" with the alleged libelous article of the same day published by the Hebrew Publishing Company, would not you say this had more weight with the Jewish public in buying citrons than this advertisement of the Hebrew Publishing Company? A. I would like to say a few words.

813

Q. It is a simple question. I withdraw the whole question. You read this on the 14th at the same time that you read the alleged libelous article of the Hebrew Publishing Company, and I ask you if there is any question in your mind, read it again and see whether this is not a much stronger article against the citrons as an editorial than this paid publication?

The Court: That is a question for the jury to say.

Mr. Miller: He is a rabbi.

814 *Plaintiff's Witness, Julius Saland, Direct*

By the Court:

Q. Are you a rabbi? A. No.

Q. What do you mean by a reverend? A. I am a rabbi for circumcision.

Mr. Miller: I withdraw it.

By Mr. Miller:

815 Q. Did you also read and did you also notice on the same day a declaration signed by twenty odd rabbis in New York City, informing and advising the Hebrew communities not to pronounce a benediction upon any other citron than a Palestine citron during that season of 1915? A. Yes.

Q. Would you say that did not in any way damage the sale of your citrons? A. I cannot say.

By Mr. Fried:

Q. Wasn't that afterward recalled by the rabbis? A. Yes, it was recalled.

Mr. Miller: I object to that.

The Court: Sustained.

816 Q. Was it recalled by one of the rabbis? A. Yes, sir.

Mr. Miller: I object.

The Court: Sustained.

JULIUS SALAND, called as a witness in behalf of the plaintiff, being first duly sworn, testifies as follows:

*Direct-examination by Mr. Fried:*

Q. You are a brother of the plaintiff? A. Yes.

Q. During March, 1915, did you take the citrons, or did you cart the citrons from the Arctic Storage House, No. 120 West Street? A. In March, 1916.

*Plaintiff's Witness, Julius Saland, Direct*

817

Q. What did you do? A. Dumped them on the Canal Street dock.

Q. How many loads?

Mr. Miller: I object.

A. Three loads.

Mr. Miller: I move to strike out the answer.

The Court: Motion denied.

Q. Do you remember how many boxes of citrons you got from the Arctic Storage Company? A. Yes, 73 large boxes and about 150 or 140 small boxes. Some boxes were five in a box. 818

Q. I am asking you about the boxes? A. An average of 150 and the small ones 140, and the exact number 170, probably.

By the Court:

Q. Did you count the citrons? A. No, I did not count the citrons because the boxes were all closed. The 73 were the large boxes.

Mr. Miller: I move to strike that out, the numbers he says were in these boxes.

The Court: Just leave it at 73 large and 140 or 150 small boxes. 819

By Mr. Fried:

Q. If I show you the receipts, will that refresh your recollection as to how many boxes there were?

A. Yes, sir, it will.

By the Court:

Q. Have you ever seen the receipt? A. Yes, I put it in there, your Honor.

820

*Plaintiff's Witness, Melek Sotz, Direct*

(Witness examines Exhibit 23 handed him by counsel.)

The Witness: Yes, I got the receipt.

Q. How many boxes were there? A. 236 small ones and 73 large ones.

By Mr. Fried:

821 Q. Are these the same boxes that you took out afterward in March? A. Yes, three loads I took out afterwards. I went three times and took out and dumped it on the dock and brought the empty boxes back to Mr. Goldman, the owner of the storage warehouse.

Mr. Miller: I move to strike that out.

The Court: Motion granted.

MELEK SOTZ, called as a witness in behalf of the plaintiff, being first duly sworn through the official interpreter, testifies as follows:

822 *Direct-examination through the interpreter by Mr. Fried:*

Q. Were you employed by the Hebrew Publishing Company in September, 1915? A. Yes.

Q. About September 19th or 20th, did you see a wagon, and sign taken down from the Hebrew Publishing Company and placed on the wagon in front of the office of the Hebrew Publishing Company?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial, and not within the issues.

The Court: Objection overruled.

Mr. Miller: Exception.

*Plaintiff's Witness, Melek Sotz, Direct*

823

A. Yes.

Q. What was on the sign, what was written on it?

Mr. Miller: I object to it on the ground they have already put in evidence the very words that appeared on that sign.

The Court: Will you concede that was the sign?

Mr. Miller: No.

The Court: Will you concede that is the sign to which this man is about to testify?

Mr. Miller: Yes, I concede that is the sign which is in evidence. I object to it on the ground it is incompetent.

824

Q. Where did you first see that sign? A. In the office of the Hebrew Publishing Company.

Q. Then where did you see it? A. At the wagon.

Q. Did you afterwards see the wagon pass Saland's place with that sign on?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial, and on the further ground they have not shown or connected with the act of the driver that he was within the scope of his authority or was authorized to go with this particular sign in evidence before Mr. Saland's store.

825

The Court: Objection overruled.

Mr. Miller: Exception.

A. No, sir.

Q. Where did you see it?

Mr. Miller: I object.

Objection overruled.

Mr. Miller: Exception.

A. I saw the sign in the Hebrew Publishing Company's office when it was brought from the sign painter.

826 *Plaintiff's Witness, Melek Sotz, Direct*

Q. The next time you saw it it was on the wagon?

A. Yes.

Q. Did you have any conversation with Mr. Werbelowsky with reference to the dispute as to the citrons?

Mr. Miller: I object.

The Court: Sustained.

Q. Did you have any conversation with Mr. Werbelowsky with reference to the sign?

Mr. Miller: I object.

827 The Court: Sustained.

Mr. Fried: Exception.

The Court: What are you trying to prove by those questions?

Mr. Fried: I understood they admitted the ownership of the sign.

The Court: You are trying to get an admission?

Mr. Fried: Yes.

The Court: Objection sustained. You are not trying to show that he was authorized to do certain things?

828 Mr. Fried: No, except as to a different matter altogether.

The Court: Objection sustained.

Q. In September, 1915, did Mr. Werbelowsky ask you to go and buy citrons from Mr. Saland?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial, and not within the issue.

The Court: Overruled.

Mr. Miller: Exception.

A. Yes.

*Plaintiff's Witness, Melek Sotz, Cross*

829

Q. What date? Do you remember the date? A. About the 5th of September.

Q. What did he tell you to do?

Mr. Miller: I object to that on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Miller: Exception.

A. He told me to go to the companies that sold citrons and to try to purchase citrons cheaper than Saland was selling them in his office, and Mr. Cutler being a friend of mine, I thought I would be able to buy them cheaper. 830

Mr. Miller: I move to strike that out.

The Court: Motion granted, I will strike out "Cutler being a friend of mine."

Q. Then did you go to Mr. Cutler afterward? A. Yes.

Q. What conversation did you have with Mr. Cutler?

Mr. Miller: Objected to.

The Court: Sustained.

*CROSS-EXAMINATION by Mr. Miller:*

831

Q. Do you say that Mr. Werbelowsky sent you about September 5th, 1915, to Mr. Saland? A. Yes.

Q. For the purpose of trying to buy citrons? A. Yes.

Q. You remember that? A. Yes.

Q. In the Hebrew Publishing Company, in what capacity did you work? A. A salesman in the office.

Q. That is, selling Hebrew publications and Yiddisher publications, etc.? A. Yes, sir.



832

*Plaintiff's Witness, Melek Sotz, Cross*

Q. You never had bought citrons in the Hebrew Publishing Company? A. This was the first year in which I was in their office.

Q. You remember now exactly that you were asked to go to Saland and buy some citrons for the Hebrew Publishing Company? A. Yes.

Q. How is it that you remember it now at this date? A. Mr. Saland comes in the office and was negotiating with the company concerning the citrons and then afterwards Mr. Werbelowsky came to me and said, "Mr. Sotz, Mr. Saland and Mr. Cutler have become  
833 partners and they want \$3 apiece." Then when I said to them that Mr. Cutler was a friend of mine, they said to me, "You go there and if it is possible see if you can manage to buy them for \$1.75."

Q. That is how you came there and tried to buy it? A. Yes, sir.

Q. Were you discharged by the Hebrew Publishing Company? A. Yes, this May.

Q. Have you any ill-feeling towards the Hebrew Publishing Company because of this discharge as an employee? A. No, sir.

Q. You are just as friendly with the Hebrew Publishing Company today as you were in September,  
834 1915? A. Yes, sir.

Q. Did you come here upon a subpoena? A. Yes.

Q. Did you discuss or go over this case with the plaintiff before you came here in court? A. No, sir.

Q. Not a word? A. No.

Q. And the story you have told about this incident of September 5th, 1915, is told by you for the first time here in court? A. Yes.

Mr. Fried: I have one witness that I did not think would be reached today, so I let him go back to Stamford. I did not want to break

*Plaintiff's Witness, Samuel Buchler, Direct, Cross* 835

up his school. It is a brother of the plaintiff, then I have another witness that I am not ready to put on this afternoon.

The Court: We will take a recess then.

Recess to March 1st, 1917.

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New York, March 1st, 1917.

Trial resumed.

836

SAMUEL BUCHLER, a witness in behalf of the plaintiff, having been previously sworn, being recalled for further examination, testifies as follows:

*By Mr. Fried:*

Q. Did you translate this letter, marked Plaintiff's Exhibit No. 25? A. I did.

Q. Is this a correct translation? A. (The witness examines the paper handed him by counsel.) It is.

Mr. Fried: I offer it in evidence.

Received in evidence and marked Plaintiff's Exhibit No. 27.

837

*CROSS-EXAMINATION by Mr. Miller:*

Q. Dr. Buchler, I wish to call your attention, while you are here, you have made a statement concerning Dr. Drochman, you said Dr. Drochman is not an orthodox rabbi? A. I did not say so.

Q. He is a semi-orthodox—

The Court: No, Dr. Buchler's statement was that seventy-five per cent of the orthodox community would not regard him as an authority.

838 *Plaintiff's Witness, Samuel Buchler, Cross*

Q. Do you admit the fact yourself that Dr. Drochman is an orthodox rabbi, would you admit that fact yourself as a rabbi? A. This is immaterial, counsellor.

Q. I didn't ask you to pass upon the question of materiality in this case.

Mr. Fried: I object.

The Court: Objection sustained.

By the Court:

839 Q. Are there any two rabbis who agree upon the absolute orthodoxy of any other two rabbis? A. No.

Q. As a matter of fact, do all the rabbis recognize as authoritative any pronouncement of any rabbi since the Schulchon? A. I don't believe that beside the Schulchon there is any other authority.

Q. You do not believe that since then there is any authority that everybody recognizes? A. That every Jew has adopted.

Q. I am speaking of every strictly orthodox Jew? A. Yes, and every rabbi is authority for his congregation.

840 Q. When did the author of the Schulchon live? A. Hundreds of years ago.

By Mr. Miller:

Q. Since the Schulchon Oruch, that the Court called your attention to, do you say now that every rabbi is independent to such an extent that he can lay down rules himself? A. He can lay down rules for his congregation.

Q. Even though the very same rules may not be sanctioned by the chief rabbi of any particular place? A. Counsellor, we have no chief rabbi. They may call themselves chief rabbi, but they are not.

*Plaintiff's Witness, Samuel Buchler, Cross*

841

Q. Would you say that Rabbi Elchanin was a rabbi of the same standard as you?

Mr. Fried: I object to that.

The Court: Overruled.

Mr. Miller: As long as he himself says that he is an authority.

The Court: Do you mean he had the same ability or he had the same authority to pass prohibitions?

Q. The same authority to pass prohibitions? A. I don't think, Counsellor, that Rabbi Elchanin had more authority than I have for my congregation. I believe my congregation would consider me more an authority than any rabbi living or dead.

842

Q. Your congregation at Bedford Avenue in Brooklyn would consider you— A. They have to.

Q. As much and as big an authority as Rabbi Elchanin? A. They do not know anything about Rabbi Elchanin.

Q. I do not ask you that. Don't be too willing, just answer my questions. You mean to tell the jury that your congregation at Bedford Avenue, Brooklyn, would consider and take you as much and as great an authority as Rabbi Elchanin? A. I certainly say so.

843

Q. You are stating the truth about it? A. I am under oath here, Counsellor.

Q. Do you think for yourself, outside of your congregation?

Mr. Fried: I object on the ground that the counsel asked leave to ask one question.

The Court: I will allow him to continue cross-examining.

Q. Do you now speak for yourself, Doctor, irrespective of the opinion of that congregation, that you can proclaim a prohibition amongst the Jews and it would

844 *Plaintiff's Witness, Samuel Buchler, Cross*

be recognized as much by a Jewish community as Rabbi Elchanin, yes or no? A. I never issued such a proclamation.

Q. You say you have as much right to issue a proclamation as Rabbi Elchanin had in his lifetime. I ask you would it be considered and regarded by the Jewish community as of the same effect and as authentic as Rabbi Elchanin? A. Most decidedly for my congregation.

By the Court:

845 Q. Doctor, you yourself would give weight to any pronouncement on any religious subject given by any rabbi whose learning you recognized? A. I would give it serious consideration.

Q. And other rabbis in the community would give it weight? A. Some would not, your Honor.

Q. I said if they recognized the learning of the rabbi? A. Even if they recognized the learning, some rabbis believe they are just as much in authority as Rabbi Elchanin.

Q. I did not say that. I say they would give weight to the pronouncement of any authority whose learning they recognized? A. Yes, they might not follow it, but they would give it weight, yes, sir.

846

By Mr. Miller:

Q. Did you ever translate any Hebrew books or Yiddish books to English? A. I did.

Q. What did you in particular translate? A. Articles for newspapers.

Q. Newspaper articles? A. That were sent to Jewish newspapers in English; I translated them into Yiddish or into Hebrew.

Q. Which is it, did you translate into Yiddish or into Hebrew? A. Both.

*Plaintiff's Witness, Samuel Buchler, Cross*

847

Q. What articles did you translate for any Jewish newspaper? A. Shall I name you the articles?

Q. You say you translated some; what were they, topics of the day, or scientific? A. All kinds of articles, any daily news, all except news.

Q. Were they of a scientific nature, or were they of a religious character? A. Some were of a scientific nature, and some of them were on religious subjects.

Q. You translated for what paper? A. For the "Bronx & Harlem Jewish Press," for the "Jewish Guide," and a few more.

Q. You consider yourself a qualified authority in translating Yiddish into English? A. In 1915 I passed the examination as court interpreter in Yiddish. 848

Q. How big a congregation is yours at Bedford Avenue? A. Do you refer to membership?

Q. Yes. A. I figure between seventy and eighty, but—

Q. No. You have been connected with this particular congregation about a year? A. Not quite a year.

Q. I said about a year? A. Yes.

Q. How old are you, Doctor? A. I am thirty-three years of age.

Q. All together, you have been connected with congregations or a minister for how many years? A. For the last nine years. 849

Q. In this country how long? A. In this country nine years. I have been in this country for nine years.

Q. You assumed your duties as a minister in this country for the first time? A. Yes.

Q. You have not been a minister across the ocean? A. No.

Q. You graduated in what seminary? A. In Pressburg, Hungary.

Q. That is rabbinical seminary? A. An orthodox rabbinical seminary.

850 *Plaintiff's Witness, Samuel Buchler, Cross*

Q. I do not remember whether I asked you ; did you read the prohibition announced by twenty old rabbis which appeared in the Yiddish issues of the "Morning Journal" on September 14th, 1915, signed by twenty odd rabbis ; have you ever read it? A. I think I answered that question.

Q. What was it? A. I said I have not read the original, but I have heard about it. I never read it in the newspapers.

Q. Do you know as a fact that even those rabbis that have joined in that prohibition on September 15th, 1915, have enjoined the Jews not to pronounce a benediction upon any citron other than a Palestine citron?

851

Mr. Fried: I object again, about so many references being made to an article which is not in evidence, and I will show your Honor that every question that has been stated has been misquoted by counsel.

The Court: Objection overruled.

Mr. Fried: Exception.

A. I have read it only lately.

Q. Do you mean here before trial? A. Not before trial.

Q. Just how long? A. Some time ago. I heard of it then, and I read it now.

852

Q. When did you read it, Doctor? A. I can't remember. I can not tell you the exact date.

Q. Give us your best recollection. (No response by the witness.)

Q. Did you read it within a few weeks before trial? A. Yes.

Q. When did you first hear of it? A. At the time of the issue of the proclamation.

By Mr. Fried:

Q. Did you also read the withdrawal after the prohibition of the most prominent rabbis, withdrawing

*Plaintiff's Witness, Samuel Buchler, Cross*

853

the statement that they had made in that prohibition?

A. I heard of this, too.

By the Court:

Q. Whose withdrawal have you heard of? A. It was especially popular, that some of the rabbis—

Q. You were asked if you had heard of the most prominent ones. Which ones have you heard of? A. Rabbi Jaffer.

Q. What others? A. I cannot recollect, but Jaffer is a popular name.

Q. Jaffer is a popular name. Now, have you heard of any other, of the withdrawal of any other? A. Of the withdrawal of Rabbi Margolies.

854

Q. Do you mean Rabbi Margolies, who is the head of the orthodox congregation? A. Yes.

Q. Have you heard of his withdrawal?

Mr. Miller: I object.

Q. Do you know anything about any such withdrawal? A. I heard about it, your Honor.

Q. How have you heard about it? A. Every minister—

Q. When did you hear about Rabbi Margolies' withdrawal from that proclamation? A. Not particularly about Rabbi Margolies.

855

Q. You said you had heard of the withdrawal of the most popular one. Which one did you hear? A. It was a rumor that Jaffer.

Q. What else? A. There are a few more.

Q. You never heard of Rabbi Margolies withdrawing? A. There are so many Rabbi Margolies.

Q. Rabbi Margolies is the head of the Union of Orthodox Congregations? A. Yes.

Q. How many congregations did they take in? A. About 200.



856

*Plaintiff's Witness, Samuel Buchler, Cross*

Q. About 200 congregations in New York City?

A. In New York City, this is an organization for the country.

By Mr. Fried:

Q. When the Court asked you whether you heard about any withdrawals, you mean prior to the trial?

A. Certainly; I saw it at the time it was issued.

Q. You were not referring to the present time?

A. No.

857

Mr. Fried: I offer in evidence the "Jewish Morning Journal" of September 19th, 1915.

Mr. Miller: That is objected to.

The Court: Wait until the other goes into evidence.

Mr. Fried: I will offer the prohibition, then.

The Court: You can put this in after the prohibition is offered.

Mr. Fried: Can I mark it now for identification?

The Court: No; it has not been identified.

Q. I will show you this article and ask you to look at it. A. (The witness examines the paper handed him by counsel.) I have seen it.

858

Q. Is this the Rabbi Margolies, the head of the Union of the Orthodox Congregations?

Mr. Miller: I object.

The Court: Sustained.

By the Court:

Q. What is the name of the Rabbi Margolies who is head of the Union of Orthodox Congregations? A. Generally he is known as Ramas Margolies, Rabbi M. Z. Margolies.

Q. What name appears in that article?

*Plaintiff's Witness, Samuel Buchler, Cross*

859

Mr. Miller: I object.

The Court: Sustained.

Q. What is the purport of that article?

Mr. Miller: I object.

The Court: Sustained.

Q. Will you read the article?

Mr. Miller: I object to that.

The Court: Sustained.

Q. Doctor, I will show you the Day of September 19th, 1915. You were asked whether you had seen the prohibition. Is that the prohibition? 860

Mr. Miller: I object. I have referred to September 14th, 1915, in which twenty odd rabbis have joined, including Jaffer and the chief rabbi.

The Court: Objection overruled.

By the Court:

Q. Is that the publication which you read? A. I stated that I did not see it.

Q. Is that the one you have seen at some time? A. I have heard about it.

861

The Court: Then I sustain the objection.

By Mr. Fried:

Q. I show you the article which appears in the "Jewish Morning Journal" of September 14th, 1915, and ask you whether you have read that article? A. (The witness examines the paper handed him by counsel.) I think that I have been guided myself by an article of this kind.

862 *Plaintiff's Witness, Samuel Buchler, Cross*

By the Court:

Q. Did you read it, Doctor, did you read that particular article? A. I think I have read it, but I cannot state.

By Mr. Fried:

Q. Is that the article when counsel asked you with reference to a prohibition by twenty rabbis, is that the article you referred to? A. Yes, it is.

By the Court:

863 Q. How do you know if you are not sure that you have read it? A. I saw those names that I referred to.

Q. That is all you mean now? A. Yes; I see the names there.

Mr. Fried: I offer it in evidence.

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: I ask to have this marked for identification.

The paper is marked Plaintiff's Exhibit No. 28 for identification.

864 By Mr. Fried:

Q. Doctor, is this a proper translation of the article just marked for identification?

Mr. Miller: I object. I do not question the translation.

Mr. Fried: I ask to have this marked for identification.

The paper is marked Plaintiff's Exhibit No. 29 for identification.

Mr. Fried: I now ask to have marked for identification the "Jewish Morning Journal" of September 19th, 1915.

*Plaintiff's Witness, Samuel Buchler, Cross*

865

Paper marked for identification Plaintiff's Exhibit No. 30.

Q. Is this a correct translation of the article marked for identification Plaintiff's Exhibit No. 30, the article entitled a "Permit"? A. (The witness examines the paper handed him by counsel.) Yes; I have translated that myself.

Q. Is that a correct translation? A. I believe it to be correct.

Mr. Fried: I ask to have this marked for identification.

866

The paper is marked Plaintiff's Exhibit No. 31 for identification.

Mr. Fried: I offer for identification the issue of the "Jewish Morning Journal" of September 16th, 1915.

Paper is marked Plaintiff's Exhibit No. 32 for identification.

Q. Dr. Buchler, did you translate the article here marked "A Decision"? A. Yes; I translated that, and believe it to be correct.

Mr. Fried: I ask to have that paper marked for identification.

867

The paper is marked Plaintiff's Exhibit No. 33 for identification.

Mr. Fried: I offer for identification the Jewish "Day" of Sunday, September 19th, 1915.

Q. I ask you to look at this paper, Doctor, and look at the advertisement there, and tell me is Exhibit 29 for identification a translation of this article? A. Yes, sir; it is.

Mr. Fried: I ask to have this paper marked for identification.

868

*Plaintiff's Witness, Samuel Buchler, Cross*

Paper is marked Plaintiff's Exhibit 34 for identification.

Q. I show you Plaintiff's Exhibit No. 34 and Plaintiff's Exhibit No. 28, and ask you whether that is the same, whether the articles are the same, and whether your translation is correct of both? (No response by the witness.)

Q. Is Exhibit 29 a correct translation of Exhibit 34 and Exhibit 28? A. Substantially; yes, sir.

869 Q. Doctor, do you regard the Jewish Encyclopedia as an authoritative book for information on Jewish matters?

Mr. Miller: I object.

The Court: Overruled.

A. I do, sir.

Q. I show you Volume 5, page 261, of the Jewish Encyclopedia, and ask you to identify this as one of the regular volumes of the encyclopedia entitled "The Esrog"? A. Yes, sir.

Mr. Fried: I offer that in evidence.

Mr. Miller: I object.

The Court: Sustained.

870 Q. Doctor, I will read you an article from the Jewish Encyclopedia, and ask you whether you consider that as authoritative information with reference to the subject of Esrogim?

Mr. Miller: I object to that as already excluded.

The Court: Objection sustained.

Q. I ask you to read yourself, on page 262, the second paragraph commencing, "In modern times."

A. I have read it, sir.

Q. In your opinion, does this paragraph give the correct historical information with reference to citrons or esrogim?

*Plaintiff's Witness, Samuel Buchler, Cross*

871

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. From your familiarity with the subject, and after reading the Jewish Encyclopedia, can you tell us whether there was any prohibition in 1891 against any citrons outside of Korfu?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

By Juror No. 10:

872

Q. Will you kindly explain what does a citron symbolize in the Tabernacle Festival; it is a symbol? A. It symbolizes Adam's apple, and it symbolizes many other things, we believe.

Q. Why is the citron used as a symbol? A. First of all, because it was considered a commandment by the Jews to take the first fruit of every planting and pronounce a benediction upon it, so one of these fruits was Adam's apple or the citron.

Q. The esrog was one of the first fruits? A. I mean the first fruit that grows, first in someone's garden, so they had adopted one of them, and this was the citron.

873

By the Court:

Q. You mean the Feast of the Tabernacles is the harvest festival? A. Yes.

Q. And is to celebrate the coming in of the first fruit of the year? A. Yes.

By Mr. Miller:

Q. The use of the citron upon the festival of Succoth, has that been enjoined by either tradition or a

874 *Plaintiff's Witness, Samuel Buchler, Cross*

decree, or has it been enjoined by the Testament itself? A. By the Testament itself.

Q. You are familiar with the Testament, Doctor?  
A. I think I am.

Q. You have read Leviticus, Chapter 24? A. I did.

Q. You noticed subdivisions 40, 41 and 42? A. I did.

Q. Are those the subdivisions, 39, 40, 41 and 42, referring to the use of lulavim and citrons? A. I must see it to refresh my memory.

875 Q. Look at it? A. Yes, sir.

By the Court:

Q. Where is the citron used? A. 38.

Q. Tree hardar means citron? A. Yes.

By Mr. Miller:

Q. It was upon that tree hardar, known as harder, that citrons were grown? A. Not necessarily.

Q. Are you going to take issue with this very book?  
A. No; with you, Counsellor.

Q. The tree harder was the very tree that bore the fruit of citron? A. There was a tree which bore the fruit of a citron.

876 Q. The hardar was the tree itself? A. I don't think so.

Q. Don't you know that the Jews, after they returned from Babylon, came back into Palestine, and upon the return and the opening of the second temple, that they took with them, and it was then that they brought into Palestine the tree hardar and planted it; do you know of that?

Mr. Fried: I object to that as not within the issues.

The Court: Objection sustained.

By the Court:

Q. Is there any word used in verses 39 and 42 of Leviticus such as citron? A. It is.

Q. Will you translate the word tree hardar for me, how would you translate the tree hardar? (No response by the witness.)

Q. Will you translate verse 40, which contains the only possible reference to citrons, does it not? A. It does.

Q. Read verse 40. A. "Ye shall take unto yourselves the first day the fruit of the tree hardar, branches of palm trees and the boughs of the myrtle tree, and willows of the brook, and ye shall rejoice before the Lord, your God, seven days"—but I beg to differ from the translation of it here.

878

Q. You are giving us the translation? A. I read the translation here.

The Court: Strike that out. That is not the question.

Q. I want you to translate, yourself, verse 40. A. "Ye shall take unto yourselves the first day the fruit of the beautiful tree, branches of palm trees and the boughs of the myrtle tree and the willows of the brook."

879

Q. As you read it, it is fruit of the beautiful tree? A. Yes.

Q. That verse has been, I suppose, interpreted in the Talmud? A. Yes; as the most beautiful one.

Q. How does the Talmud interpret the word "beautiful tree"? A. As a citron.

Q. And the Talmud, by orthodox Jews, is regarded as authoritative? A. Yes.

Q. Without any question? A. Yes.

By Mr. Miller:

Q. Doctor, do you know yourself where this tree hardar had first been discovered?



880 *Plaintiff's Witness, Christos Goussios, Direct*

Mr. Fried: I object.

The Court: We don't know anything about the tree hardar.

Q. Hardar itself means beautiful, you say? A. It means beautiful.

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CHRISTOS GOUSSIOS, called as a witness in behalf of the plaintiff, being duly sworn, testifies as follows:

881

*Direct-examination by Mr. Fried:*

Q. Have you ever dealt with citrons? A. Yes.

Q. Where? A. In 1915, September 15th.

Q. Did you deal with citrons before that time? A. No, not here in the United States.

Q. Where did you deal with citrons before 1915? A. In Triest, Austria.

Q. How many years before 1915? A. At Triest always citrons from Parga.

Mr. Miller: I move to strike that out.

The Court: Motion granted.

882 Q. How many years before 1917? A. Many years, I can't say.

Q. Were you in Korfu in 1915? A. No, sir.

Q. When before that were you in Korfu? A. I traveled from Korfu.

Q. How often? A. When I was to Greece, three or four times a year.

Q. Have you been through the Island of Korfu? A. Not all the parts, but mostly.

Q. Have you seen any citrons in Korfu in recent years?

Mr. Miller: I object to that.

*Plaintiff's Witness, Aaron Saland, Direct*

883

By the Court:

Q. When were you there last? A. About twelve years ago.

The Court: What do you mean by recent years.

By Mr. Fried:

Q. Is that the last that you were in Korfu? A. Yes.

Q. How lately were you in Triest?

Mr. Miller: I object.

884

The Court: Objection overruled.

A. The same year, twelve years ago.

AARON SALAND, called as a witness in behalf of the plaintiff, being first duly sworn, testifies as follows:

*Direct-examination by Mr. Fried:*

Q. What is your occupation? A. Teacher.

Q. Where? A. Stamford, Connecticut.

Q. You are a brother of the plaintiff? A. I am a brother of Mr. Saland.

885

Q. In September, 1915, did you accompany your brother to the office of the Hebrew Publishing Company? A. Yes.

Q. What day? A. September 5.

Q. Were you present at a conversation had between your brother and Mr. Werbelowsky? A. Yes, sir.

Q. Tell the Court and these gentlemen what the conversation was. A. I have to explain the whole thing.

Q. No, just state the conversation had that you heard between your brother and Mr. Werbelowsky.

886

*Plaintiff's Witness, Aaron Saland, Direct*

Did you have a conversation with Mr. Werbelowsky?

A. Yes.

Q. With reference to citrons? A. Yes.

Q. Tell the conversation. A. Not only with Mr. Werbelowsky himself, but Mr. Chimsky was also there. In the office, when I came up, Mr. Saland and I came in the office of the Hebrew Publishing Company in No. 50 and 52 Eldridge Street, it was on Sunday, September 5, 1915. In the office of the publishing company, there was no others except Mr. Werbelowsky, Mr. Chimsky, and Mr. Saland and I. Mr. Saland offered them the prices of—

887

Mr. Miller: I object to what he offered. Let him state the conversation.

Q. State what your brother said and what Mr. Werbelowsky said. A. Mr. Saland said: "I can now give you esrogim at prices," and Mr. Werbelowsky said, "We want to have the esrogim at the same prices as the previous year, the last year, and if you are not going to give us at this price, we will not take it, and we will open an advertising campaign against you," and then Mr. Chimsky hit with the fist on the desk, near the counter and said, "We will open an advertising campaign against you, and we will chase you out of the market of citrons, and you will never be able to buy and sell citrons any more for the Jews."

888

Q. Did your brother make any other proposition? A. Mr. Saland said, "If you don't want this proposition as I gave it to you, I will offer you another proposition, take the goods, as many as you want, and sell it at my risk, and for each set that you will sell, you will get a half a dollar commission."

Q. What did he say to that? A. They said, "No, we won't, only as we told you, to go in either in partnership or to give us the same price as before."

Q. What did your brother say? A. Mr. Saland said, "This is ridiculous, and I don't believe you will

*Plaintiff's Witness, Aaron Saland, Cross*

889

open an advertising campaign." So they said, "Yes, we earnestly mean it, to open an advertising campaign and to chase you out entirely of the market."

Q. Was there anything else said? A. Nothing else.

Mr. Fried: That is all.

*CROSS-EXAMINATION by Mr. Miller:*

Q. What sort of a teacher are you? A. A Hebrew teacher.

Q. You are a teacher at Stamford, Connecticut? A. I am a teacher at Stamford, Connecticut, in Hebrew Institute.

890

Q. Had you been a teacher at Stamford, Connecticut, in September 5th, 1915? A. September 5th, 1915, I was, in Stone Avenue, in the Hebrew Free School, Stone Avenue, in Brooklyn, New York.

Q. That is commonly known as Brownsville, isn't it? A. Brownsville.

Q. How old are you? A. Thirty-one.

Q. How long have you been in this country? A. Four and one-half years.

Q. Altogether today? A. Altogether today, I came here September 6th, 1912.

891

Q. During all this time you have been engaged in being a Hebrew teacher? A. Yes.

Q. Where did you live September, 1915? A. I lived in No. 320 East 16th Street, in a boarding house.

Q. Where were you teaching then and what hours of the day were you engaged in teaching? A. Teaching in the Hebrew school in the week.

Q. On that day, September 5, or during the month of September, 1915? A. To answer this question I have to tell you when the Hebrew schools are open, and when they are teaching, so you will understand it.

892 *Plaintiff's Witness, Aaron Saland, Cross*

Q. What hours of the day were you engaged in teaching in that institute in the month of September, 1915? A. During the month of September it was vacation time and we teach generally, as I said, every day of the week, except Friday and Saturday, every day, the four days, Monday, Tuesday, Wednesday and Thursday and teach from four o'clock until eight, and Sunday we teach in the morning from nine until one. However in the time of vacation when the children have no public school we teach on Fridays, instead of Sundays, so the Hebrew Sunday is for recreation.

893 Q. On this particular September 5th was this on a Sunday? A. It was on a Sunday and it was at the time of vacation and the public schools did not teach and we taught on Friday instead of Sunday.

Q. What were you doing on that very Sunday? A. On that very Sunday I was employed by Mr. Saland to help him work in esrogim, I was a shipping clerk by esrogim.

Q. You were Mr. Saland's shipping clerk? A. Yes.

Q. You did this work in conjunction with your teaching? A. Exactly.

894 Q. During the entire season had you been engaged by Mr. Saland as his shipping clerk? A. Yes.

Q. On September 5th when you worked for Mr. Saland, at what store? A. On September 5, 1915, in Canal Street, No. 41, Max Koebler's bank.

Q. That is Canal, corner of Ludlow? A. Canal, corner of Ludlow, not exactly on the corner because there is another store, a clothing store between the corner. It is considered a corner, but right next to it is another clothing store.

Q. This particular store that you were working in for Mr. Saland, had one entrance fronting on Canal

Street known as No. 41 and another entrance on Ludlow Street known as No. 5 Ludlow Street? A. Yes.

Q. What time of the day did you start to work on that particular day? A. I had no exact time.

Q. Give us your best recollection? A. About eight o'clock.

Q. That was your usual time? A. Yes.

Q. You had been engaged in doing your shipping as soon as you came there? A. Yes, packing up and shipping.

Q. What did you ship and what did you pack? Citrons? A. All citrons and palms and myrtles, we used to pack up in the cases and wrap it in the paper and tie it with a rope write the addresses, mark it in and tie it with a rope write the addresses, mark away, we had also to sign on each package where it goes and—you asked me my work, what I did.

896

Q. Were you the only one that did this kind of work? A. This work I did myself, to sign every package where it goes.

Q. Were you the only one that did this kind of work I say? A. I was the only one on this particular work to sign the package and to bind them up.

By the Court:

897

Q. Were you the only one that did that particular work or was there somebody else who did it also? A. To help me bind them and tie them up, sometimes I asked somebody else to help me, but to sign on the packages on which express it is to go, it is only I myself who did it.

By Mr. Miller:

Q. On the 5th of September, 1915, you had been working at the store all day long? A. Sometimes I went out when Mr. Saland called me to go with

him, I sometimes went out. I had, sometimes, to go out and get a drink or somewhere else I was sent, but what Mr. Saland told me to do, I did it.

Q. At what time did you go with Mr. Saland to the Hebrew Publishing Company? A. It was about noon.

Q. Did Mr. Saland ask you to go with him? A. Yes.

Q. Did he tell you why? A. No.

Q. Didn't he tell you to go along in order that you may be a witness in this case? A. No, sir.

899 Q. He just merely suggested to you to go along? A. Yes, I several times went with him to the Hebrew Publishing Company.

Q. You went along with him? A. Yes.

Q. What time was it that you reached the Hebrew Publishing Company? A. About noon.

Q. What time, twelve o'clock? A. I don't remember.

Q. What particular room in the Hebrew Publishing Company were you in? A. It was right near the entrance to the elevator.

Q. Do you know what floor or loft? A. I don't remember exactly; it is the second or the third.

900 Q. Do you know where the Hebrew Publishing Company's offices are, what loft in that particular building? A. I said I don't remember whether it is the second or the third.

Q. You remember exactly what took place and what the conversation was on September 5, when you related that on your direct-examination? A. I remember.

Q. You remembered every word? A. I remember every word.

Q. Yet you don't remember where the offices of the Hebrew Publishing Company were on that day, as

to whether it was the third or second loft? A. I don't remember whether it is the second or the third floor.

Q. How did you get up there? A. With the elevator.

Q. Can you describe the elevator man who took you up? A. I don't remember his face, because—

Q. You say you got into the office at what hour, twelve o'clock, about? A. About noon.

Q. When you got into the offices, as the door opened, where did you enter from the elevator? A. Right in, the counter, there is a counter on this side, on the left where you enter. Right near the elevator door is the cashier and then is the counter and the offices are there, and the other side is a counter where the salesmen are standing and selling books, and it was just facing from the elevator as you go in from the elevator, and you were coming in, it was just right in front of you. 902

Q. After you got in there did you go any farther into any other room? A. No; I stopped right there.

Q. Are there any gates there? A. There is, I think, right after the elevator, also stairs to go down.

Q. Right after the elevator? A. Right after the elevator, as you are coming in with your face, getting off of the elevator, to the right of it are stairs to go down. 903

Q. You stopped at the place where the customers come in and stop; is that the place? A. Where the customers are coming.

Q. You did not enter into any room which was cut off by any gate? A. No, sir.

Q. Who was the first person that you saw there? A. I saw both of them together. They appeared to me both at once, Mr. Werbelowsky and Mr. Chimsky.



904

*Plaintiff's Witness, Aaron Saland, Cross*

Q. When you say that appeared to you, where did they come from? A. They were there when I came there; they were in behind the counter in the office there. I called it an office because it is right behind the counter where no customer is allowed to come in and they were over there and both appeared to me at one time.

Q. Did they come out from underneath that counter? A. They appeared to me when I came in; they appeared to me.

905 Q. When they appeared to you, what do you mean, what do you mean, do you mean you met them right there and then in this particular open space? A. When I came in the place, I saw them first and they appeared to me, the first of my entrance as I came in, I saw them.

Q. Did you see them come toward you after? A. I came over there and then they came back near the counter.

Q. Were they on the other side of the counter? A. Yes.

Q. And you were on the outside? A. I was on the outside where customers are standing.

906 Q. You and your brother opened, then and there, this negotiation concerning the citrons? A. I beg your pardon?

Q. Who started to talk? A. I have nothing to do with the citrons.

Q. Who opened the conversation that you overheard? A. Mr. Saland.

Q. What did he say and whom did he say it to, the first thing? A. He said to both of them: "I have ready my prices about those citrons."

Q. Are you quoting him now? A. I am not quoting.

Q. You are not quoting him? A. No.

*Plaintiff's Witness, Aaron Saland, Cross*

907

Q. Are you giving your version of what took place or are you telling what your brother said to Werbelowsky?

Mr. Fried: I object to that.

By the Court:

Q. Are you giving your best recollection as to what your brother said? A. I am giving my best recollection, but I say I am not quoting exactly word by word.

Q. Are you quoting word for word as near as you can with your present recollection? A. Yes.

908

By Mr. Miller:

Q. You heard your brother say to Mr. Werbelowsky, what? A. I heard him say: "Here I have now ready the prices for the citrons."

Q. Anything else your brother said to Mr. Werbelowsky? A. They answered him: "Well, let us hear."

Q. Both of them said that? A. Yes.

Q. At the same time? A. At the same time.

Q. Then in response to this your brother said what? A. He gave them the prices.

Q. Don't tell us what he gave. What did he say? 909

A. He said the prices will be four dollars for whole-sale or for retail he will sell it for four dollars, but for the Hebrew Publishing Company, because they are a good customer and are buying always esrogim he will give them those very goods that sells to others for four dollars, he will give them at three dollars a set.

Q. What did Mr. Werbelowsky or Mr. Chinsky say to that? A. That they—

Mr. Fried: I object.

Mr. Miller: Question withdrawn.

910 *Plaintiff's Witness, Aaron Saland, Cross*

Q. What did Mr. Werbelowsky say to Mr. Saland? A. Mr. Werbelowsky said and always when Mr. Werbelowsky spoke to Mr. Saland, Mr. Chimsky always helped him out in his words.

Q. Why are you so careful in giving your testimony to volunteer and to put in always something that I did not ask you?

Mr. Fried: I object.

The Court: Sustained.

911 Q. I asked you what Mr. Werbelowsky said and not what Mr. Chimsky said in addition? A. I want to explain it.

Q. There is nothing to explain? A. This is my way of talking.

Q. Please continue and confine yourself to the conversation between Mr. Werbelowsky and your brother? A. That is what I am doing. Mr. Werbelowsky said that the Hewbrew Publishing Company will not buy this esrogim at this price but they want to have it on the price as of the previous year and if Mr. Saland will not give him, they tell him, "if you will not give to us at the same prices we are selling to you, or take us in as a partner in the business we will open an advertising campaign against you."

912 Q. At that time when you overheard this conversation did you anticipate a lawsuit between your brother and the Hebrew Publishing Company? A. I never had it in my mind.

Q. After Mr. Werbelowsky said that, what did your brother say? A. My brother said that "this is ridiculous, that you will dictate to me on my business, how I shall sell it and on which prices I shall sell it."

Q. Did he say anything else? A. I don't remember.

Q. If he did you would remember? A. Maybe.

*Plaintiff's Witness, Aaron Saland, Cross*

913

Q. Why is there a doubt in your mind that things have been said there that you do not remember and not relate here?

Mr. Fried: I object.

The Court: Overruled.

Q. Why is there a doubt in your mind that things have been said there that you don't remember and don't relate here? A. Well, sometimes I only remember those which I think it is worth while to remember, I am hearing many things and if it is worth while I remember.

914

Q. In this case you know it was worth while in remembering what you related? A. I think so.

Q. After what you have just related, what occurred next? A. Mr. Chinsky then said hitting the fist on the desk near the counter, he said "We will positively open a campaign against you, and we will chase you out of the market."

Q. Were you in court during the examination in chief and cross-examination of your brother on the witness stand? A. Not always.

Q. Have you listened to the history of this trouble as related by your brother? A. Not all.

Mr. Fried: Object to that.

915

The Court: Objection overruled.

Q. Did you substantially hear what he testified to as to what took place on that particular occasion at the Hebrew Publishing Company?

Mr. Fried: Object to that as not proper cross-examination.

The Court: Overruled.

Mr. Fried: Exception.

A I am testifying my own what I saw.

916

*Plaintiff's Witness, Aaron Saland, Cross*

Q. I asked you did you hear him state the story as to how this took place at the Hebrew Publishing Company? A. No.

Q. Were you out of court then? A. Yes.

Q. Had you been here in court from the beginning of this trial? A. No.

Q. When did you come in first? A. I came in the beginning of the trial here and I have every time to leave because I have to go back to Stamford to teach.

Q. Every day? A. Yes, sir.

917

Q. What time of the day did you leave the court room here? A. Sometimes I leave at 12 o'clock and sometimes I leave at ten, because I have some other business to do in the city when I am here.

Q. After what Mr. Chinsky told your brother, both of you left the office? A. Yes, sir.

Q. Where did you go, back again? A. Back again to Canal Street.

Q. Back to Mr. Saland's place? A. Yes.

Q. Did you join the participants in this discussion, between Mr. Werbelowsky and your brother at that time? A. No.

918

Q. Did your brother tell you why he took you along on that particular day to the Hebrew Publishing Company?

Mr. Fried: I object to the question.

The Court: Objection sustained.

Q. Since September 5, 1915, and up to how long of that particular season called the citron season, did you remain as shipping clerk with your brother? A. To the last day which is on the eve of the 22nd of September, the eve of the holidays.

Q. 1915? A. Yes.

Q. Had you been employed in the same capacity for your brother in 1916? A. Yes.

*Plaintiff's Witness, Aaron Saland, Cross*

919

Q. You are still in his employ? A. Not now.

Q. The 1916 season is over? A. Yes.

Q. You expect to stay with your brother as shipping clerk? A. I cannot tell.

Q. You have not been told to the contrary, have you? A. No.

Q. Was this conversation that you have related spoken loudly or was it a whispering? A. No, it was loud.

Q. Did you notice at the same place where you were whether there was a cashier at the cash place that you describe? A. I did not notice it.

920

Q. Did you notice whether there were any clerks or salesmen at the counter at the time this discussion took place? A. No, sir.

Q. That you did notice? A. Yes.

Q. That there was not a salesman on the floor? A. Yes.

Q. Is this a large loft, can you tell? A. Oh, yes.

Q. Is this an office loft or is it a sales loft? A. Well, it has a partition right in the middle. It comes this way like a half triangle, right on this side and on the left is the counter.

The Court: I think we have it described sufficiently.

921

Q. Do you know whether in the same loft the Hebrew Publishing Company has clerks and salesmen that do work of selling and clerical work of book-keeping at that same place that you have described?

Mr. Fried: I object.

The Court: Objection overruled.

Q. Do you know whether in the same loft the Hebrew Publishing Company has clerks and salesmen that do work of selling and clerical work of book-

922

*Plaintiff's Witness, Aaron Saland, Cross*

keeping at that same place that you have described?  
A. Salesmen I know. Bookkeeping I do not know.

Q. Have they a number of salesmen so far as you know at that particular place, the loft you have described? A. I don't know.

By the Court:

Q. You say there were none there that day? A. On that day none were there.

By Mr. Miller:

123 Q. How long in all did you stay there from the time this discussion opened until you left the loft? A. I recollect about half an hour.

Q. Would you say it was between 12 o'clock and half-past 12 you left the office? A. Exactly the time I said I don't know. It was about noon.

Q. Will you give us your best recollection, was it about half-past twelve that you left the office? A. I did not look at my time.

Q. You did not look at your time? A. No.

Q. Can't you give us your best judgment? A. My best judgment—

1924 Mr. Fried: I object, on the ground he has already stated the best of his recollection.

The Court: What is your best judgment?

The Witness: My best judgment is it was about noon, but I can't judge exactly the time.

Q. What is your best judgment as to the time you stayed? A. The time was between 11 and 12.

Q. As to the time you stayed there? A. When we left it must have been about 12 o'clock, or some time quarter to 12 or five minutes.

Q. How long did you stay there altogether? A. About half an hour.

By Mr. Miller :

Q. At one time I understood you to say you came there about the noon hour. Now, you say between 11 and 12. Which was it, was it between 11 and 12 that you arrived at this loft where the discussion took place, or was it about the noon hour, you know when the noon hour is? A. The noon hour is about 12 o'clock. I say between 11 and 12 that we came because exactly the time I don't know, a quarter of 12 or ten minutes of 12, that we might come over there, which is also near noon, about noon.

926

Q. So you could not tell whether it was between 11 and quarter after 12? A. I did not say quarter after 12, I said quarter to 12.

Q. That is about the time that you can fix, between 11 and quarter of 12? A. That I can judge.

Q. You stayed there about half an hour? A. Yes.

Q. Did you talk this case over before you took the stand? A. No, I do not live here in New York.

Q. You told your story of what you overheard on that occasion that you have testified to for the first time on this witness stand? A. Yes, sir.

927

ELIAS SCLEIM, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows :

*Direct-examination by Mr. Fried:*

Q. What is your business? A. Representing the Jewish Daily News. And the Jewish Morning Journal.

By the Court :

Q. Representing them as what? A. Advertising and business department.



928 *Plaintiff's Witness, David Werbelowsky, Direct*

By Mr. Fried:

Q. In September, 1915, did you have a conversation with Mr. Kazenelinbouden of the Hebrew Publishing Company? A. Yes, it was on the 17th day of September, 1915, on a Friday afternoon.

Q. Do you know what office Mr. Kazenelinbouden holds with the Hebrew Publishing Company? A. I believe he is president, I don't know exactly. I know he holds some office with them.

929 Mr. Miller: I move to strike that out what he believes.

The Court: Motion granted.

Mr. Fried: Will you concede he is president of the Hebrew Publishing Company?

Mr. Miller: I do not.

Mr. Fried: Or holds office as secretary and treasurer.

Mr. Miller: Not secreetary and not treasurer.

Mr. Fried: Is he a director?

Mr. Miller: I will not concede.

The Witness: He is a member of it.

930 The Court: You cannot answer that. That is stricken out.

Mr. Fried: I ask leave to withdraw the witness.

The Court: Very well.

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DAVID WERBELOWSKY, called as a witness in behalf of the plaintiff, being first duly affirmed, testified as follows:

*Direct-examination by Mr. Fried:*

Q. What is your office you hold in the Hebrew Publishing Company? A. Secretary.

*Plaintiff's Witness, Elias Scleim, Direct*

931

Q. You were secretary in 1915? A. I was.

Q. In 1915 what office did Mr. Kazenelinbougen hold? A. Vice president.

Q. Did Mr. Kazenelinbougen take an active part in the management of the business? A. In selling only.

Q. Did not he assist you in the management of the business? A. Not in buying.

Q. In the general course of business? A. We used to consult. The officers used to consult at a meeting, yes.

932

ELIAS SCLEIM, called as a witness in behalf of the plaintiff, resuming, testifies as follows:

*Direct-examination resumed by Mr. Fried:*

Q. Now, Mr. Scleim, on September 17th, 1915, did you meet Mr. Kazenelinbougen? A. Yes.

Q. Where? A. At the office of the Jewish Morning Journal.

Q. What was he doing?

Mr. Miller: Object to what he was doing there.

The Court: Objection overruled.

933

Mr. Miller: Exception.

A. He brought in proofs of advertisements of a double column advertisement.

Q. Do you remember what the contents of the advertisement was? A. Yes, sir, if I may have the papers.

Q. I show you this paper marked Plaintiff's Exhibit for Identification No. 34 of the date September 19, 1915, and ask you whether the proof was of this page of advertising?

934

*Plaintiff's Witness, Elias Selein, Direct*

Mr. Miller: I object to that as incompetent, irrelevant and immaterial and not binding on the defendant.

The Court: Have you got the tentative translation here of that?

Mr. Fried: Yes.

The Court: I will exclude the paper when it comes, but you may ask your questions.

The Witness: This is the proof which he brought in, printed on a blank paper. This is a proof which Mr. Kazenelinbouden brought in to have it issued in the issue of the paper on the 19th.

935

Mr. Fried: I offer in evidence Plaintiff's Exhibit 34 for Identification.

Mr. Miller: Object to that as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Fried: Exception.

Q. Who else was there? A. In the office?

Q. Yes. A. There were many people in there.

Q. I mean was the conversation had with you? A. No.

Q. With whom? A. With some people in the office. I had conversation with Mr. Kazenelinbouden, not in the office of the Jewish Morning Journal, but I had the conversation on the street.

936

By the Court:

Q. That was not a business conversation that you had afterward with him? A. No, sir.

Mr. Miller: I object.

The Court: Sustained.

By Mr. Fried:

Q. Did you have any conversation in the office of the newspaper with any particular individual?

*Plaintiff's Witness, Elias Selein, Direct*

937

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception.

A. Yes.

Q. With whom? A. With Mr. Fritkin, the manager of the Jewish Morning Journal.

By the Court:

Q. In your presence? A. Yes.

Q. Did you hear it? A. Yes.

Mr. Miller: I object.

938

The Court: Overruled.

Mr. Miller: Exception.

By Mr. Fried:

Q. What was the conversation? A. Mr. Fritkin refused to take the advertisement.

Mr. Miller: I move to strike that out.

The Court: Motion granted.

Q. What was said, what did Mr. Kazenelinbouden say to Mr. Fritkin?

Mr. Miller: I object on the ground the witness designated this man Fritkin as the manager, and that is a conclusion.

939

The Court: Objection overruled.

Mr. Miller: Exception.

A. Mr. Kazenelinbouden asked Mr. Fritkin to insert the advertisement in the issue of the 19th as the proof read, but Mr. Fritkin refused.

By the Court:

Q. What did he say? A. Mr. Fritkin said, "If you will permit me to cut the bottom part of the advertising off, so it don't appear in the paper," he will print it on the 19th.

940

*Plaintiff's Witness, Elias Selein, Direct*

Q. What happened? A. Mr. Kazenelinbougouen consented to do it and he cut off the bottom of the advertisement and threw it into the waste basket.

By Mr. Fried:

Q. Did he tell him why?

Mr. Miller: Object.

The Court: Strike out the entire conversation because the article is not going in and we don't know what was contained in it.

941

Q. What did you and Mr. Kazenelinbougouen afterward do? A. We went out and walked over to East Broadway.

Q. Did you ever have any conversation with him? A. I spoke to Mr. Kazenelinbougouen.

Mr. Miller: I object.

The Court: Objection sustained.

Mr. Fried: Exception.

The Court: You can only put in admissions where they are part of the business of a corporation.

Mr. Miller: Do I understand your Honor strikes it all out.

942

The Court: Strike it out.

Q. Did you have any conversation with Mr. Kazenelinbougouen with reference to Mr. Saland and the citron business?

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. Did you have any conversation with Mr. Kazenelinbougouen with reference to certain advertising and articles inserted by the Hebrew Publishing Company in the Jewish daily papers?

*Plaintiff's Witness, Elias Scleim, Direct*

943

Mr. Miller: I object.

The Court: Objection overruled.

Mr. Miller: Exception.

By the Court:

Q. Answer yes or no? A. Yes, sir.

Q. Before or after their insertion? A. After their insertion.

Q. They were not business conversations? A. No, sir.

By Mr. Fried:

Q. What was the conversation that you had with him?

944

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

Q. Did you have any conversation with Mr. Kazen-  
elinbouden with reference to placing advertisements in  
the papers that you represented?

Mr. Miller: I object to that as incompetent,  
irrelevant and immaterial and not binding on  
the defendant.

The Court: Overruled.

945

Mr. Miller: Exception.

A. Yes, sir.

Q. What was that? A. I asked him what for  
should he insert this kind of advertisement which will  
hurt—

Mr. Miller: I object to that and move to  
strike that all out.

The Court: Motion granted.

Mr. Fried: Exception.

946

*Motion to Dismiss Complaint*

Q. Did he ask you to place any advertisement in the papers?

Mr. Miller: I object.

The Court: Sustained.

A. No, sir.

Mr. Fried: I move to amend the complaint in accordance with the proof.

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

947

## PLAINTIFF RESTS.

The Court: Have you any particular amendment you wish to make?

Mr. Fried: I mean in detail, for instance, such as cedars to be citrons.

The Court: The Court is going to regard the complaint as amended in that regard. Where the evidence has gone in undisputed.

Mr. Fried: And with reference to the meaning of the word where it is translated abominable and there are a number of translations.

948

The Court: There you cannot change, but I will leave it to the jury whether it is substantially correct, but with reference to cedars I am going to tell the jury that means citrons.

Mr. Fried: Plaintiff rests.

Mr. Miller: I now move to dismiss the complaint on the ground that the plaintiff has failed to establish his cause of action.

The Court: Motion denied.

Mr. Miller: I particularly desire to mention the fact that he has not shown that this alleged libelous article referred to him and that the

*Motion to Dismiss Complaint*

949

ordinary reader upon reading that article could or would have understood that it meant the plaintiff in this action.

The Court: Motion denied.

Mr. Miller: Exception. I also particularly refer your Honor to the lack of proof of damage.

The Court: Motion denied.

Mr. Miller: Exception.

The Court: I do not mean by that at all that I have made up my mind that I am going to leave to the jury the question of special damage. The probabilities are it will go to the jury only on the question of general damages. 950

Mr. Miller: Has your Honor also passed on the question as to the sufficiency of the complaint originally?

The Court: Necessarily, I passed on it when I denied your motion.

Mr. Miller: Then I except.

Mr. Fried: I wish to read this exhibit to the jury, Exhibit No. 27, and the translation of Exhibit No. 25.

The Court: That letter is admitted for one purpose only. The plaintiff claims loss of reputation. One way of showing loss of reputation is by letters received from people. It may be received on that point whether the publication of this article resulted in the loss of reputation to this plaintiff or not, but it cannot be considered as proving any statements contained in that letter. It may be considered only for the one purpose of whether it shows that the plaintiff lost reputation by the publication of the alleged libelous article. 951

Mr. Fried: I think if any part of the letter was evidence, the whole part is in evidence.



952 *Defendant's Witness, Alexander Harkaby, Direct*

The Court: It is all in evidence but it can be considered only for one purpose for what it is competent to prove, no statement there as to what his ideas are and as to the cause of the prohibition may be considered by the jury.

Mr. Miller: I understood that this letter was offered in evidence only for the purpose of showing the cancellation of the telegram referred to.

The Court: I won't allow the jury to consider it for any purpose except what it is competent to prove.

953

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ALEXANDER HARKABY, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

*Direct-examination by Mr. Miller:*

Q. What is your business? A. I am an author on educational work, a writer.

Q. Have you also issued dictionaries translating Yiddish and Hebrew into English? A. Yes, sir.

954 Q. Have you also been engaged in general—

Mr. Fried: I concede his competency as a translator, no question about it at all.

Q. I will read you the translation of the alleged libelous article that you have examined and ask you whether it is correct as I read it to you? A. I desire to have the text.

Q. "A duty to publish. The Hebrew Publishing Company who since former years have not omitted a single year to supply their numerous customers with the best Palestine citrons at the cheapest prices"—  
A. Shall I correct when I find anything wrong?

*Defendant's Witness, Alexander Harkaby, Direct* ' 55

The Court: Yes.

Q. I ask you to look at the Morning Journal, the same article: "A duty to publish. The Hebrew Publishing Company who since former years have not omitted a single year to supply their numerous customers with the best Palestine citrons at the cheapest prices, find it necessary to acquaint the public with the following. We have not this year received any citrons from Palestine with the exception of a few American citron dealers no one received any citrons this year from Palestine. We need not make any investigation regarding that—" A. Commentaries. 956

By the Court:

Q. We need not make any explanation, is that just as well? A. Yes.

By Mr. Miller:

Q. (Reading) "We need not make any explanation regarding that because every one knows that from the countries that are at war no citrons can be procured and just as we could not bring any Hebrew books from Russia and Austria, just so we could not bring any citrons from Palestine." A. Instead of "No citrons can be brought," it should be "nothing." 957

Q. "Just so we could not bring anything"? A. Yes.

Q. In place of the word citrons? A. Yes.

Q. "And so were left all the reliable citrons dealers in America"? A. Yes.

Q. "This year without citrons"? A. Yes.

Q. "Energy and financial effort did not help and naturally when one has no citrons one does not pronounce any blessing"? A. That is it.

Q. "We would not have found it necessary to make this explanation were it not for the abominable thing."

A. I should suggest "this disagreeable action."

958 *Defendant's Witness, Alexander Harkaby, Direct*

Q. "Were it not for the abominable thing perpetrated by a few citron dealers. Just listen and you will be astonished at what is apt to happen. As amongst the citron dealers in America are found a few who have every year appealed to the public through announcements in the newspapers, that no other citrons could be purchased except Palestine citrons, because thereby assistance is rendered toward the rebuilding of the Holy Land and support is given to thousands of colonists who derive a living"? A. Colonists in the land of Israel, in Palestine.

959 By the Court:

Q. Wherever you have used the word Palestine the Land of Israel is meant? A. Yes.

By Mr. Miller:

Q. "And support is given to those of colonists in Palestine who derive a living from planting citrons. Now, those citron dealers have seen they cannot procure any citrons from Palestine so they travelled over to Korfu, Greece, and bought up a big stock of Korfu citrons and just those citrons that come from a land where the ground is saturated with Jewish blood and which were prohibited by all the sages of Europe"—

960

By the Court:

Q. Eminent Rabbis? A. Eminent, but by implication it means Rabbis.

Q. Renowned Rabbis was the term used by Dr. Brill? A. Eminent Rabbis.

By Mr. Miller:

Q. "By all the eminent Rabbis of Europe; so they advertised that they have through untiring efforts procured a small number and that it cost them a big price." A. Well, you say untiring efforts. It means

*Defendant's Witness, Alexander Harkaby, Direct* 961

with hard labor but it is identical. With great difficulty it means.

Q. Which way do you say? A. It means with great difficulty.

Q. Through untiring efforts procured only a small number and that it cost them a big price." A. (No response from the witness.)

By the Court:

Q. It could be translated great pains also? A. Yes, that is more exact.

By Mr. Miller: 962

Q. Through great pains? A. Yes.

Q. "And through great pains procured only a small number and that it cost them a big price. Then ask yourself why should these forbidden goods cost dear and why it should require great pains to bring to America—" A. To bring to America, yes.

Q. "They all know apparently—"

By the Court:

Q. Is that correct? A. It seems everybody know, that is what it means.

Q. "Although without any doubt," how would that do? A. It seems everybody knows. 963

By Mr. Miller:

Q. That implies a doubt? A. Yes.

Q. "It seems they all know that Korfu citrons are always the cheapest in the market because not all the citrons dealers would buy them and naturally where there are such buyers it ought to be and is cheaper and besides the two"— A. "An article which has few buyers ought and must be cheaper."

964 *Defendant's Witness, Alexander Harkaby, Direct*

By the Court:

Q. Will you read it from the words, "It seems that all know"? A. Everybody knows it seems that Korfu citrons are always the cheapest in the market because not all citron dealers buy them and naturally an article that has few buyers ought and must be cheap."

By Mr. Miller:

Q. And besides the two main markets such as Russia and Austria are closed, then why should they be  
965 so dear? Also the importing should not have been so difficult because Greece is not yet involved in war. The answer is." (No response from the witness.)

By the Court:

Q. Is that answer or truth? A. "Answer."

By Mr. Miller:

Q. The answer is that Korfu citrons cost a trifle, very little, perhaps ten cents a citron and there have been enough brought over to be used as preserves after the holidays? A. To suffice making preserves after the holidays.

966 By the Court:

Q. For the holidays or after the holidays? A. After the holidays.

Q. You translate it "That Korfu citrons"—the answer is that Korfu citrons cost only a trifle, very little, perhaps ten cents a citron and there have been enough brought over to suffice to be used as preserves after the holidays? A. To suffice for making preserves for the holidays.

*Defendant's Witness, Alexander Harkaby, Direct* 967

By Mr. Miller:

Q. Read it for me? A. "Enough have been brought over to suffice for making preserves after the holidays."

Q. "But it was agreed amongst themselves that they should circulate a rumor, or a report—" A. It is the same thing.

Q. That citrons are scarce and very high prices in order to blind the public and that it should not inquire what kind of citrons they were and to exact a high price from the public? A. From the public is superfluous. 968

Q. To exact a high price—

By Mr. Fried:

Q. Is not the word public there? A. No, it says from it. By implication, from it.

By the Court:

Q. Is the word "blind" correctly translated? A. Well, literally it means to blind the eyes of the public.

Q. Does it mean throw dust in the eyes? A. Well, in a sense it means that. It means to make the public blind to it.

By Mr. Miller: 969

Q. To exact a high price from it? A. Yes.

Q. "We find it necessary to announce in order that the public should not be fooled"— A. No, the word as used here, it means that the public may not be—

By Mr. Fried:

Q. Is not the word "dummy" fooled? A. Dummy, yes, that would be good.

970 *Defendant's Witness, Alexander Harkaby, Direct*

By Mr. Miller:

Q. "In order that the public should not be a dummy, and that it should not permit itself to be"—how would you translate what follows? A. "Not permit its skin to be frayed," that is the literal translation, not permit itself to be skinned.

Q. With Korfu citrons which are unfit for blessing? A. Yes.

By the Court:

971 Q. You know the word skinned in English has an implication of cheating or dishonesty. Is that which you are translating by the word skinned—has that the same implication? A. No.

Q. So the words, "To have its skin taken off" would be closer? A. Skin has not all the shadows of meaning that the English word has.

Q. It has not the implication of dishonesty? A. The cheating or deceiving, it has not. It has the literal meaning.

Q. Dr. Brill translated that, it should not permit itself to have the skin taken off? A. That does not appeal to me as good English. It means to be exacted, as exacting high prices.

972 By Mr. Miller:

Q. It means really "not to permit itself"? A. Not to give up to high prices or something, it means not to surrender.

Mr. Fried: I object.

By the Court:

Q. Literally it means to have its skin taken off? A. Yes, it means frayed, that is what it means, but it has not the English of cheating or deceiving. It has

*Defendant's Witness, Alexander Harkaby, Direct*

973

not got that meaning. If you say in Yiddish, it means actually frayed or it might do something worse, but it has not got the meaning of deceiving, that much I can say.

By Mr. Miller :

Q. "All the citron dealers from the whole country"?

A. It does not say "from the whole," it says from the country.

Q. From the country should give this information to their customers? A. Should make this known.

Q. All Rabbis, Cantors, Shoctum, Presidents of Synagogues, Religious Societies, and all those interested in the religious wants of the people should acquaint their congregation? A. It means any communal interests.

974

Q. And forewarn them not to buy any citrons this year? A. Not forewarn them, it means to call upon them and demand of them.

Q. Call upon them not to buy any citrons this year because it is much better not to pronounce a blessing on any citron than to pronounce a blessing on a Korfu citron which grows on the ground? A. Grows upon the ground.

Q. Which grows upon ground soaked in Jewish blood. It is a much higher duty to give the money to be paid for the citrons to the relief fund of our unfortunate Jewish brethren and sisters of the war countries that trust so strongly to our help? A. Which are in so much need of our help.

975

Q. It is a much higher duty to give that money to Talmud Torahs, and Yeshibeths in Palestine, which are in danger of being closed on account of the war? A. Yes.

Q. In that paragraph where you say you say you see the Jewish word "dochter," I now call your attention to that word? A. I see it.



976 *Defendant's Witness, Alexander Harkaby, Direct*

Q. Dr. Brill while on the stand translated the Jewish word "dochter" and insisted upon the correctness of the translation "without any doubt"? Isn't it a matter of fact that the word "dochter" implies a doubt?

A. "Dochter" sometimes rather implies, if it does imply anything at all, it implies certain things more than a doubt.

Q. You know without a doubt? A. Yes.

Q. Would you ever translate dochtor "without a doubt"? A. No, never.

Q. You translate it "it seems"? A. "It seems,"  
977 and I leave it to the reader to guess, that is the way to do.

Q. When a person says "without a doubt" there is no doubt left? A. Certainly if ones means without a doubt he should say so.

Q. Is this your translation of the advertisement that appeared in the Jewish Morning Journal of September 8th, 1915, marked Defendant's Exhibit H?

A. (Witness examines the paper handed him by counsel.) Yes, sir.

Mr. Miller: I offer in evidence the translation now as the same exhibit.

The Court: That is the article which the  
978 plaintiff says he did not publish.

Mr. Miller: And not paid for.

The Court: Which he says he did not pay for.

Received in evidence and marked Defendant's Exhibit H, part 2.

Defendant's Exhibit H, Part 2, read to the jury.

Q. Are these your translations of the advertisements of Mr. Saland, Mr. Cutler and Mr. Goldberg that appeared in the Jewish Morning Journal on Sep-

*Defendant's Witness, Alexander Harkaby, Direct* 979

tember 8th, 1915, and marked Defendant's Exhibit C?

The Court: They are not in evidence as to Goldberg and Cutler. The Cutler advertisement, there is no proof of it being paid for or authorized, but as to the Goldberg and Saland advertisements if they are not in evidence already they may go in evidence.

Mr. Miller: Is there any question as to Mr. Cutler having paid for this advertisement.

The Court: It does not make any difference whether Mr. Cutler did or not. 980

Mr. Miller: I understood Mr. Cutler had a limited partnership.

The Court: That is not in the case.

Q. Then confine your answer only to the advertisement of Mr. Saland and Mr. Goldberg. Are these your translations? A. (Witness examines the paper handed him by counsel.) Yes.

Mr. Miller: I offer in evidence the two translations of Saland and Goldberg advertisements.

Received in evidence and marked as Defendant's Exhibit C, Part 2 and Part 3.

Mr. Miller reads Defendant's Exhibit C, Part 2, and Plaintiff's Exhibit C, Part 3, to the jury. 981

Recess to 2 o'clock.

982 *Defendant's Witness, Alexander Harkaby, Direct*

Afternoon session.

ALEXANDER HARKABY, a witness in behalf of the defendant, recalled, resuming, testifies as follows:

*Direct-examination resumed by Mr. Miller:*

Q. I show you Defendant's Exhibit B and ask you whether the translation annexed to it is correct and is your own translation? A. Yes, sir.

983 Mr. Miller: I offer in evidence the translation to be marked the same as the original is. Received in evidence and marked Defendant's Exhibit B, part 2.

Mr. Miller reads Defendant's Exhibit B, Part 2, to the jury.

The Court: Is that an advertisement which he admits he paid for?

Mr. Miller: Yes, 1914, the year before.

Q. I show you Defendant's Exhibit F and I ask you whether the translation attached thereto is yours, and whether it is correct? A. Yes, sir.

984 Mr. Miller: I offer that in evidence, the translation of Exhibit F.

Received in evidence and marked Defendant's Exhibit F, Part 2.

Mr. Miller reads Defendant's Exhibit F, Part 2, to the jury.

The Court: Gentlemen of the jury, I charged you, after the letter of Rabbi Rappaport was read, that that was introduced only for the limited purposes, that is to show the effect of the alleged libelous article, and that that must not be taken as proof of any statement of fact or opinion contained therein. In the same way

*Defendant's Witness, Alexander Harkaby, Direct*

985

I want to charge you in regard to this editorial, I am admitting that and it is material only on one ground. The plaintiff has presented evidence here to show the publication of the alleged libelous article and then presented other evidence from which he desires you to infer that he had been actually damaged through the publication of the alleged libelous article. Now, the defendant is permitted to put in this editorial for the purpose of allowing you to form an inference or asking you to form an inference that the damage which occurred thereafter occurred not through the alleged libelous article but through this editorial. No statement of fact contained in that article is to be taken as proven by the mere fact of it being in that article, that has no probative force to show that these things actually occurred. It is merely introduced for the one sole purpose to show it was published and then it will be for you to consider from which article the damage came.

986

Mr. Fried: Your Honor has said the jury shall infer whether the damages are from this article or from the other article. I understand that the jury would infer that this article might effect the damages which the plaintiff may have sustained, but not that one article absolutely excludes the other.

987

The Court: No, the complaint is in regard to the libelous article and if you find the damages were caused by the libelous article and it was a libelous article under my charge, then you will be allowed to give damages in spite of the publication of this article, but you will have to consider that upon the question of damages and upon that question alone.

988 *Defendant's Witness, Alexander Harkaby, Cross*

Juror No. 9: What is the date of that article?

The Court: The same date. It was published simultaneously and as you notice it refers practically to the article which the defendant published, that is, they were published simultaneously.

Mr. Miller: It says, "Book-sellers" it does not say, "The Hebrew Publishing Company." There were a number of other book-sellers in existence at that time.

989 The Court: I take that back. You may consider that upon the evidence and not upon my statement. It does not refer specifically to the defendant.

Q. I show you Plaintiff's Exhibit 24 and in conjunction with this exhibit I show you this translation of yours and ask you to see whether that is your translation of this exhibit? A. It is the same in substance but not in wording. (Witness examines the paper handed him by counsel.)

Mr. Fried: It is substantially correct.

Mr. Miller: I offer it in evidence.

990 Received in evidence and marked Defendant's Exhibit I.

Mr. Miller reads Defendant's Exhibit I to the jury.

The Court: That is the sign that was on the wagon, gentlemen.

*CROSS-EXAMINATION by Mr. Fried:*

Q. Where did you get this translation from, this sign that you translate, where did you get the contents? A. At the office of the Hebrew Publishing Company.

*Defendant's Witness, Alexander Harkaby, Cross* 991

Q. What did they give you?

Mr. Miller: Objected to.

The Court: Overruled.

Q. From what? A. A typewritten copy.

By the Court:

Q. When? A. A few weeks ago, I really did not observe the date.

By Mr. Fried:

Q. Doctor, the word here, that phrase that is translated as "exorbitant prices," what is the literal translation of the word? A. It means in Yiddish literally to pull off a streak of skin. 992

The Court: How often is that phrase used in the original?

Mr. Fried: Once.

The Court: You have used in your own original translation the word skin twice.

Mr. Fried: The first one I am referring to.

The Court: The first place that it should not inquire what kind of citrons they were and to ask a very extravagant price.

Mr. Fried: Yes.

993

The Court: You are inquiring about the word which the witness has translated as extravagant twice.

Mr. Fried: Yes.

By the Court:

Q. What is the literal meaning? A. To pull off a streak of skin.

Q. What is the Yiddish term used at the end of the paragraph, that it should not permit itself to have its skin taken off? A. It is a different word.

994 *Defendant's Witness, Alexander Harkaby, Cross*

By Mr. Fried:

Q. That is stronger than the first word? A. This is an idiomatic expression.

Mr. Miller: I move to strike that out.

The Court: Strike out that it is stronger than the first.

Mr. Miller: I understand the witness to tell your Honor that that word does not have the meaning of cheating or defrauding.

The Court: I intend so to tell the jury.

995 By Mr. Fried:

Q. The Yiddish is a jargon? A. Yes.

By the Court:

Q. Yiddish is a very different language from Hebrew? A. Yes.

Q. It is an inexact language? A. No, it is an exact language. It has developed into an independent language.

Q. Have words in Yiddish any definite meaning the way they have in languages of literature? A. Yes.

996 By Mr. Fried:

Q. Yiddish has not had its Shakespeare yet? A. I think to a certain extent it has. We have great writers.

Q. Yiddish is affected by the various languages where the jargon is used?

Mr. Miller: I object to that.

The Court: Overruled.

A. It certainly is like every other language.

Q. In its use in Austria it is affected by the Austrian language? A. Yes.

*Defendant's Witness, Alexander Harkaby, Cross*

997

Q. If it is used in Russia it is affected by the Russian language? A. Yes.

Q. If it is used in America it is affected by the American language? A. Yes.

Q. Is that right? A. Yes.

Q. Consequently if a gentleman understanding English and Yiddish would read the words "Shinden the Hote," would not the first thing that occurred to him be that it was skinned?

Mr. Miller: I object.

Q. Would not the first flash across his mind be skinned? A. No, it would not. If you will permit me to explain, I will show you why. It is true that the language is influenced by the surroundings, the same will be true of German, used in this country, if you take the German in the Staats Zeitung, you will find it to be somewhat different from what is used in Germany, but a language is influenced by another language, but it is not in the way you have just stated. It is another way. We in America here accept English terms and sometimes give an English shade to a Hebrew meaning. It is true enough but not in this case.

998

Q. I am not asking you in this case. I am asking you the general impression, that is all.

999

Mr. Miller: I move to strike that out.

The Court: I will take out "But not in this case."

By Mr. Miller:

Q. You say, however, in this case, reading the context completely, you have translated it correctly as you did on the stand? A. Yes.

Q. And you stand by the translation? A. Yes.



1000 *Defendant's Witness, Alexander Harkaby, Cross*

By Mr. Fried:

Q. Do you mean to say that the rest of the article softens the meaning of those three words? A. I say nothing of the kind.

Q. What does it do, if anything? A. I am only speaking of this particular phrase.

Q. Your counsel just asked you in this particular case and I wanted to exclude it. You said in this particular case, reading with the rest of the article, you do not translate it as severely? A. I did not so say.

1001 Q. Does the rest of the article soften in any way the meaning of that word? A. It neither softens or makes it harsher. I maintain that it means to flay off the skin, but there is no influence of English on it. This is not owing to the influence of English on it.

Q. Isn't it a fact that the largest number of Jewish people understand both Yiddish and English? A. Yes.

Q. Would not it flash across their minds when they read it that it is a skin? A. No, not in the light of the English word, because in English it means to cheat.

Mr. Fried: I object to that.

The Court: I will strike out that.

1002 By the Court:

Q. The meaning of the English word, Doctor Harkaby, you have translated, the word trefoh as prohibited? A. Yes.

Q. Dr. Brill has translated it as ritually unclean. Will you explain to me the meaning of the word trefoh? A. Trefoh is a word having several meanings according to the object to which it refers. If for instance trefoh should refer to prohibited meat, you know well about meat being kosher and about meat being fit for food and about meat being unfit for food among the Jews. If it refers to meat unfit for

*Defendant's Witness, Alexander Harkaby, Cross* 1003

use, the trefoh means forbidden. And it means to a certain extent, in a very remote sense, unclean. The literal meaning of the word comes originally from the use of meat. It means torn meat, an animal torn by a wolf, or by an enemy or prey.

Q. Trefoh is a Hebrew word? A. Yes.

Q. Which has been imported into Yiddish? A. Yes, and it originally refers to meat forbidden for use and especially of animals torn by animals of prey.

Q. What is the root of trefoh? A. It means torn, it means to tear. It means to tear by a wild animal. Afterward this expression has been applied to other things forbidden, although it has nothing to do with the tearing by wild beasts. 1004

Q. When you say forbidden you mean forbidden for use by Jews? A. By Jews.

Q. Forbidden that a Jew should use it? A. Yes.

By Mr. Fried:

Q. Most of the articles that are pronounced trefoh are so pronounced on account of their uncleanness and unsanitary condition, is that so? A. That is a matter of circumstances. Some things become trefoh because of uncleanness and some things become trefoh by reason of another thing, for instance if an esrog loses its nut at the top, that does not mean uncleanly, but it would be unfit for use. 1005

Q. In certain cases it would mean ritually unclean? A. It is ritually forbidden.

By the Court:

Q. Doctor, you say if the citron should lose its top it would be forbidden? A. Yes.

Q. You would not call it trefoh? A. No, not exactly.

Q. Even though it was forbidden? A. Yes.

1006 *Defendant's Witness, Alexander Harkaby, Cross*

Q. The word trefoh means forbidden, not only for use in any ceremony, but where the entire use is forbidden by Jews? A. Yes, especially of meat.

By Mr. Fried:

Q. The word trefoh as applied to citron is a much stronger word than the word possel? A. It means the same but it is stronger, perhaps. I don't think it is quite properly applied to an esrog.

Q. Trefoh you would apply to food which was prohibited? A. Yes.

1007 Q. And other things? A. Yes.

Q. An esrog you would say was possel, not properly to be used? A. Yes.

By Mr. Miller:

Q. You say possel would be a rather more fit word? A. Yes.

Q. Did you hear Dr. Brill translate lulof a cedar? A. Yes.

Q. Do you say that a cedar is a lulof? A. Not by any means, a cedar is a timber tree.

Q. It has no connection at all with a lulof or with a citron? A. No.

1008 By the Court:

Q. What branches are used? A. Palm branches.

Q. What other branches are used? A. Those are the willow trees and myrtles.

*Defendant's Witness, David Werbelowsky, Direct* : 1009

DAVID WERBELOWSKY, a witness previously sworn, being called by the defendant, testifies as follows:

*Direct-examination by Mr. Miller:*

Q. You are the secretary of the defendant corporation? A. Yes.

Q. And have been such secretary since September, 1915, and up to the present day? A. Yes.

Q. Do you know Mr. Saland? A. I do.

Q. For how long have you known him? A. Three or four years.

1010

Q. Prior to September, 1915, did you or the defendant corporation ever purchase any citrons from Mr. Saland? A. Yes, sir.

Q. Does your concern purchase or import citrons to this country? A. Yes, sir; we did.

Q. For how many years has your concern been importing citrons into this country? A. Since its incorporation.

Q. How many years is that? A. 1901.

By the Court:

Q. Direct or indirect? A. Direct and later indirect.

1011

By Mr. Miller:

Q. In your experience with citrons did your concern import Palestine citrons between 1901 and up to 1915? A. Yes.

Q. What was your concern's connection with citrons with regard to the kind of citrons they were importing, what was it most that they imported? A. Palestine citrons.

Q. When did you stop importing citrons directly? A. 1913.

1012 *Defendant's Witness, David Werbelowsky, Direct*

Q. How much on an average did you import of Palestine citrons? A. Our imports were ninety per cent of Palestine and ten per cent of Triest.

Q. In 1913 you say you ceased importing altogether? A. Yes.

Q. You purchased citrons from importers and dealers? A. Yes.

Q. Did you start your connection with Mr. Saland in 1913? A. Yes.

Q. Did you buy citrons of Mr. Saland in 1913? A. Yes, sir.

1013 Q. Did you buy of Mr. Saland citrons in 1914? A. Yes, sir.

Q. What kind of citrons did you buy of Mr. Saland in 1913? A. Palestine and Triest.

Q. What were most of them? A. Palestine.

Q. In 1914 what kind of citrons did you then purchase of Mr. Saland? A. Palestine and Triest.

Q. In 1914 did you give him an order? A. Yes.

Q. For what kind of citrons? A. Palestine citrons.

Q. Did he say he was going to bring you Palestine citrons? A. Yes.

1014 Q. When he came back in 1914 did he sell you Palestine esrogim, and is that the bill? A. (Witness examines the paper handed him by counsel.) Yes.

Q. Does it cover Palestine citrons? A. Yes.

Q. How many? A. Over a thousand.

By the Court:

Q. 1,200? A. No, 1,100. No, it is a little less than a thousand.

By Mr. Miller:

Q. Just figure out how many were there? A. 955.

Q. How much did you pay him for a Palestine citron? A. We had an understanding since 1913 that he should bring—

*Defendant's Witness, David Werbelowsky, Direct* 1015

Mr. Fried: I object to the understanding.

The Court: Objection sustained.

Mr. Fried: I move to strike out the answer.

The Court: Motion granted.

Q. What did you tell him in 1913 which you characterized as an understanding? A. He came to us and asked us if we—

Mr. Fried: I object to that also as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

The Witness: He came to us in 1913 before he left for Palestine to bring esrogim, and asked us whether we should not place an order with him he should bring also us esrogim, and he would charge us a commission of fifteen per cent above his actual net cost. In 1913 was the first time, and we told him we will make a trial order of four or five hundred, I don't remember the quantity, and then he brought us the esrogim and delivered them to us and charged us fifteen cents above his cost. In 1914, he likewise came to us and asked us to place with him our entire order. We agreed upon that and gave him the order verbally to bring us Palestine esrogim on the same understanding, fifteen cents apiece commission. 1016

Q. How much did you pay him for a Palestine citron in 1914? A. \$1.40 the average, the sorted kind, the sorted in closed boxes. 1017

By Juror No. 10:

Q. In a set? A. A complete set.

By Mr. Miller:

Q. That included the lulof? A. Yes.

Q. It consists of three constituents, a myrtle, a willow and a palm? A. Yes. We also bought from

1018 *Defendant's Witness, David Werbelowsky, Direct*

him extra lulavim because when we bought from him the esrogim it included the lulavim, the palm, and usually a part of the palms rot away before they can be used, so we bought extra lulavim from him to replace those that decay.

Q. You paid \$1.40 for a complete set? A. Yes.

Q. Palestine citrons and lulavim? A. Yes.

Q. When he was in this country, did you get from him any other citrons? A. We did.

Q. When was that? A. During the season.

Q. During the season of 1914? A. Yes.

1019 Q. How many? A. Forty.

Q. What kind? A. Triest.

Q. How much did you pay him for a complete set of those citrons? A. \$1.

By the Court:

Q. Is that all you paid in 1914? A. That is all.

Q. What did you pay for the lulavim separately?  
A. 39 cents apiece, some higher.

By Mr. Miller:

Q. The lulavim was of the same character, of the same grade, whether it went with a Palestine citron, or with a Triest citron? A. Yes.

1020 Q. They are the same kind? A. Yes.

Q. And the same price? A. Yes. They are, however, different prices. If you select the palms, if you buy them open, it is charged more, because when we buy them closed, they are maybe some decayed. The price 39 cents is closed, sealed, not knowing whether they are all of a kind to be used.

Q. While your concern has been engaged in the importing of citrons during these years that you have testified to, have you become familiar with the difference in value between the Palestine citrons and the Triest citrons? A. Yes, sir.

*Defendant's Witness, David Werbelowsky, Direct* 1021

Q. What do you say, which of the two citrons was more expensive on the market, Palestine or Greek citrons?

Mr. Fried: In what year?

Q. All the time? A. Comparing the quality, the Palestine esrogim were much more.

Q. In the year 1914, the difference you paid Mr. Saland was 40 cents, the difference between a Triest citron and a Palestine citron? A. Yes.

Q. How much more do you say was the difference in the market price on an average of the same character, the same quality of citron between a Palestine citron and a Greek citron? A. 25 to 40 per cent. 1022

Q. Can you tell us on an average what was the difference in proportion of your purchases of Palestine and Triest citrons, how much of Palestine, as a rule, did you buy compared with Triest citrons? A. 90 per cent of Palestine and 10 per cent of Triest.

Q. Do you know or can you explain under what circumstances did you buy and sell Triest citrons? A. There were some people who wanted to have Triest esrogim for its shape and color, not being interested in Palestine citrons, we had a certain trade of Jews, and Reformed Temples that wanted to have especially these esrogim. 1023

Q. Where did your trade go, the ten per cent of Triest citrons, whom did you mostly furnish them to, what part of the country? A. Out west.

Q. Did you in every instance that you sold this percentage of Triest citrons, did you apprise your customers of the fact that they were Triest citrons? A. Always did.

Q. In 1915 did you see Mr. Saland before he departed from this country? A. Yes.

Q. On his journey to Greece? A. Yes.

Q. About when was it that you saw him? A. About in June.



1024 *Defendant's Witness, David Werbelowsky, Direct*

Q. Did you have any conversation with him then?

A. Yes.

Q. What did you say? A. He came to us and he said he was going to bring some esrogim and we should give him the order for our requirements in 1915.

Q. Did he tell you what kind of esrogim he is going to bring? A. Yes.

Q. Tell us. A. Palestine esrogim and Triest, as usual.

1025 Q. Did he mention to you that he is going to bring Greek esrogim from Greece? A. We did not speak about that, I don't remember that.

Q. Those were the esrogim that you spoke about? A. Yes.

Q. What did you say to him? A. He should bring 1,200 esrogim for us from Palestine.

Q. You gave him an order for 1,200 Palestine esrogim? A. Yes.

Q. Did he say he was going to bring it? A. He was going to try to bring it.

Q. That is all you saw of him before he went? A. Yes.

Q. Did you discuss with him at that time any price?

1026 Mr. Fried: I object to that as leading.

By the Court:

Q. Tell us the whole conversation as you remember it. A. He told us he would charge us the same rate that he did the previous few years, 15 cents each profit.

By Mr. Miller:

Q. 15 cents profit? A. Yes.

Q. Over the net cost? A. Yes.

Q. After he returned to this country, had he seen you? A. Yes.

*Defendant's Witness, David Werbelowsky, Direct* 1027

Q. About when? A. A few days after he arrived.

Q. Where did he see you? A. At my office.

Q. At the offices of the Hebrew Publishing Company? A. Yes, private office adjoining the directors' room in the rear of the loft.

Q. Can you fix the date that he came to see you on this occasion? A. The latter part of August, I believe.

Q. What was the conversation, if any, between you and Mr. Saland? A. He came in and he told me that he did not bring with him any Palestine esrogim on the ship that he arrived but that he expects within a week to get in a shipment from Alexandria of Palestine esrogim, he told me he had made arrangements in Alexandria to get the Palestine esrogim, but he could not wait until he should take it along with him, he told me, within a week he will know it. 1028

Q. Did he tell you as to what kind of esrogim he then had on hand? A. No.

Q. What did he say? A. He got them from Piraeus, Greece.

Q. Did he offer those for sale to you? A. Not the first time that he saw us.

Q. Did you have any discussion at that time about the Greek esrogim? A. No, sir. 1029

By the Court:

Q. Did you discuss anything about price at that time? A. No, sir.

By Mr. Miller:

Q. When did he see you again? A. In about a week later.

Q. In your office? A. Yes.

Q. Can you remember what day of the week it was? A. I do not.

1030 *Defendant's Witness, David Werbelowsky, Direct*

Q. Was it on a Sunday? A. I could not tell you, I don't remember that.

Q. On this second occasion did he come alone? A. Yes.

Q. Did he have a conversation with you? A. Yes.

Q. What was the substance of the conversation?

A. He came and told me that he will not get Palestine esrogim, that the only thing that he can offer us was the Greek esrogim at \$3 a set.

Q. What did you say to him? A. I told him that I will consult the officers, when we have a meeting, and I will let him know in a few days.

1031 Q. That is all that took place at that time? A. Yes, sir.

Q. Did you see him again? A. Yes.

Q. When was that? A. A few days later.

Q. Did he come with anybody? A. No, sir.

Q. When he came in, whom did he see? A. Just came in to my office, I was there.

Q. Did you talk to him? A. I did.

Q. What did you say? A. I told him we have decided not to handle any esrogim this year on account of not being able to get Palestine esrogim, and we did not want to handle Greek esrogim.

1032 Q. What did he say to you in answer to that? A. Nothing at all.

Q. Was this the last occasion that he saw you? A. At my office.

Q. Did you up to that time ever tell or inform Mr. Saland that unless he let your concern go in with him as a partner, or unless he sells these citrons to your concern for the price you had made up with him before he left, you would start out an advertising campaign to ruin him? A. Never uttered any such words.

Q. Did you make any such threat? A. No, sir.

Q. Did you ask him to let your concern in in this transaction in the way of a partnership? A. No, sir; we would not handle it.

*Defendant's Witness, David Werbelowsky, Direct* 1033

Q. Did you see at any time in company with Mr. Sundel Saland, the plaintiff, his brother, Aaron Saland, who was on the witness stand? A. Never met him before today.

Q. Had you ever seen Mr. Saland at any other place after the last occasion you have testified to? A. I did.

Q. Where and when? A. I passed by his place on 41 Canal Street about four or five days before the holidays and he stood there at the door and I walked up to him, and we had a conversation together.

Q. When was it, if you can remember? A. About 1034 four days before the Tabernacle holidays, I just reminded him of \$5 that he owes me for a ticket I sold him for the Brooklyn Federation of Jewish Charities, which I sold him before he left. He told me he would pay it to me after the holidays, he did not have the money with him.

Mr. Fried: I move to strike that out.

The Court: Motion granted.

Q. Do you know of your own knowledge, as a citron importer and dealer, whether it is not and was not customary within two or three days prior to the opening of the Jewish Festival of Succoth, to sell citrons 1035 at much less than \$2 or \$3 a citron?

Mr. Fried: I object to that as not a proper subject for expert testimony.

The Court: Objection overruled.

Mr. Fried: Exception.

A. Two or three days before the holidays sets were sold at \$1.25.

By the Court:

Q. When? A. Every year.

1036 *Defendant's Witness, David Werbelowsky, Direct*

By Mr. Miller:

Q. In 1914 and 1913? A. Yes, sir.

By the Court:

Q. In what years? A. All years.

Q. Prior to 1915? A. Yes.

By Mr. Miller:

Q. What price did you say? A. Between 50 and \$1.25.

Q. 50 cents to \$1.25 the last two or three days?  
1037 A. Yes, sir.

Q. Did you know in the year 1914 and prior thereto that there was a ban upon Greek citrons uttered and decreed by Rabbi Isaac Elchanin, Jacob Joseph, and other eminent rabbis, as early as 1891? A. I did not know it in 1891.

Q. Did you know in the year 1914, I ask you? A. Yes.

Q. Did you know it in 1913? A. Yes.

Q. When was the first time that you knew of it?  
A. About eighteen years ago.

Q. Was this proclamation, so far as you know, a widespread one between the Jewish citron dealers—  
1038 did other citron dealers, so far as you know—

Mr. Fried: I object to that.

The Court: Sustained.

Q. Did you ever buy or import yourself in your whole experience any Greek citrons? A. No, sir; not from Greece.

Q. Who caused this alleged libelous article to be published in the newspapers in question here, which one of your concern?

Mr. Fried: I object to that.

The Court: Objection sustained as to form.

*Defendant's Witness, David Werbelowsky, Direct* 1039

Q. Who was it that had charge of this particular transaction in your concern about the writing out of this article in question?

Mr. Fried: I object to that as incompetent, irrelevant and immaterial, and on the ground the article speaks for itself.

The Court: I am merely permitting it upon the question of express malice.

A. Mr. Chimsky, our treasurer.

Q. You had nothing to do with it? A. No.

By the Court: 1040

Q. Did you direct him to write it out and publish it, did you direct him to write out an advertisement?

A. We discussed it at a meeting.

Q. And came to the conclusion you wanted him to write it? A. We wanted him to write it to inform our customers.

By Mr. Miller:

Q. And to inform your customers of the situation?

A. Yes.

Q. You had a lot of inquiries during that same season and calls upon you for citrons, did you not?

A. Yes, sir.

1041

Q. It was quite voluminous in correspondence? A. As usual it was.

Q. It was your concern's desire to give a history of the condition or affairs prevailing at that time concerning citrons?

Mr. Fried: Objected to, as to what his desire was.

Mr. Miller: On the question of malice.

The Court: Objection sustained.

Mr. Miller: Exception.

1042 *Defendant's Witness, David Werbelowsky, Direct*

Q. What prompted the issuance of this article?

Mr. Fried: I object to that.

The Court: Overruled.

Mr. Fried: Exception.

Q. To inform the public why we do not deal this year with esrogim.

Q. To give them a history of the situation? A. To give them the facts as we found them.

Mr. Fried: I move to strike that out "as they found them."

1043 The Court: Objection overruled.

Mr. Fried: Exception.

Q. Did you or your concern mean in any way to refer this article in question to Mr. Saland?

Mr. Fried: I object.

The Court: Overruled.

Mr. Fried: Exception.

A. We meant no one in particular. We simply stated the facts as we found them.

Mr. Fried: I move to strike that out as not responsive.

1044 By the Court:

Q. Do you mean to say that you did not include the plaintiff amongst the dealers to whom you refer there?

A. Not in informing the customers of the facts.

Q. When you refer to "amongst the dealers in America are found a few who every year appeal to the public," were you not referring to the plaintiff?

A. Not him particularly.

Q. He was one amongst others? A. Yes.

Q. Did you not include the plaintiff amongst the dealers whom that article made reference to? A. Presumably, yes.

*Defendant's Witness, David Werbelowsky, Direct* 1045

By Mr. Miller :

Q. You had made this as a general history of the situation? A. Yes.

Q. It would refer to such persons where the application would properly fall? A. Yes.

Q. There was also a dealer by the name of Cutler? A. Yes.

Q. You knew of him? A. Yes.

Q. And also Mr. T. Goldberg? A. Yes.

By the Court :

Q. Were those the three dealers you were referring to? A. Probably we did not know many, probably there were more that we are not aware of, how many dealers there were. 1046

Q. You did know and did intend people should include the plaintiff amongst the dealers to whom you were referring in this article? A. We did not know at that time whether the plaintiff is implicated in such a combination only from what he told us.

Q. You did, when you wrote this article, intend to refer to the plaintiff among other dealers? A. We did not know at that time and we could not tell.

By Mr. Miller :

Q. Did you, at the time this article was published, believe that it was unjust for citron dealers to sell Greek citrons without announcing in the very advertisement in the paper the fact that those citrons were Greek citrons and not Palestine citrons? 1047

Mr. Fried : I object.

The Court : Sustained.

Mr. Miller : Exception.

By Mr. Miller :

Q. Did you read the advertisements that appeared before September 15th, 1915? A. Yes.



1048 *Defendant's Witness, David Werbelowsky, Direct*

Q. From the various citron dealers announcing the offering for sale of citrons? A. Yes, sir.

Q. Did you read Saland's advertisement of September 24th, 1914, the year before? A. Yes, sir.

Q. Did you notice in that same advertisement, Plaintiff's Exhibit B, where he says that he received his stock of esrogim from Palestine? A. Yes.

Q. Did you read in 1915 the following year, the same advertisement of the same plaintiff in the same paper of the issue of September 8th, 1915, where he announced, as it appears in Exhibit C? A. Yes, sir.

1049 Q. You saw that in this advertisement in this particular year he has failed to disclose the nature and character of esrogim that he has offered for sale?

Mr. Fried: I object to that.

The Court: Sustained.

Mr. Miller: Exception.

Q. Did you also notice in the papers that Mr. Saland was advertising some of his citrons from 41 Canal Street, and Mr. Cutler was advertising the sale of his citrons from 5 Ludlow Street, which is the same address, to the Jewish community, through the newspaper? A. Yes.

1050 Q. That was prior to the issuing of your alleged libelous article? A. Yes.

Q. Was there at that time a widespread report or rumor that both of them, Mr. Cutler and Mr. Saland, and also one by the name of Mr. Gottlieb, combined together in order to exact the high price upon citrons that they imported into the country at that time?

Mr. Fried: I object to that?

The Court: Sustained.

Mr. Miller: Exception.

Q. Did you hear anybody complain or speaking of that fact?

*Defendant's Witness, David Werbelowsky, Direct* 1051

Mr. Fried: I object.

The Court: Sustained.

Mr. Miller: Exception.

Q. Did this fact that these persons that I have mentioned who were as you know and as it is here all one, Mr. Saland and Mr. Cutler—

Mr. Fried: I object.

Mr. Miller: Question withdrawn.

Q. Did the fact that Mr. Saland was advertising separately and Mr. Cutler was advertising separately through these announcements in the newspapers, impress you with the fact that they were trying to conceal from the Jewish public that they were united in order to exact high prices for the citrons? 1052

Mr. Fried: I object.

The Court: Sustained.

Mr. Miller: Exception.

Q. Did you read on September 14th, 1915, the editorial that appeared in the Wahrheit, which is marked Defendant's Exhibit F?

Mr. Fried: I object on the ground that they did not plead privilege, or that their defense is true, and that whatever he saw affected his mind is not within the issue, and also on the ground that the article was published in the same issue. 1053

The Court: I sustain the objection on the second ground.

Mr. Miller: I ask if he read it on the day it appeared.

The Court: I have sustained the objection on the ground it is immaterial.

1054 *Defendant's Witness, David Werbelowsky, Direct*

Q. Did you read Defendant's Exhibit H that appeared in the Jewish Morning Journal on September 8th, 1915? A. I did.

Q. Did you also read the Jewish Daily News on September 13th, 1915? A. Yes, sir.

Q. While the plaintiff's case was on—I have not offered this article—I offer it now.

1055 Mr. Fried: I object to this as incompetent, irrelevant and immaterial, and not properly shown to be the paper, and not properly identified as an issue of the paper. The reason for my objection is that if they will consent to all the papers going in, the prohibition, the permit and the withdrawal, I will consent to that, otherwise I object to it as not being identified.

The Court: I am going to sustain it as having nothing to do with this case. Objection sustained as immaterial and irrelevant.

Q. I show you a form of a postal card and a translation thereof, and ask you are those the notices that you sent out to your customers concerning the condition of citrons at that time. (The witness examines the papers handed him by counsel.) A. Yes, sir.

1056 Mr. Miller: I offer this in evidence.

Mr. Fried: I object to that as incompetent, irrelevant and immaterial.

Mr. Miller: I want to show that the article they tried to connect with the sign they have here was in order to inform the customers at large of the condition of the market and the history of the whole citron question at that time. In doing that we were trying to avoid the annoyance of continual demands from customers.

The Court: I will allow it in but not on that ground.

*Defendant's Witness, David Werbelowsky, Direct* 1057

By the Court:

Q. You sent that out to all your customers? A. Yes.

Q. On that day? A. Yes.

Q. September 7th? A. Yes.

The Court: I will admit it.

Mr. Fried: Exception.

Received in evidence and marked Defendant's Exhibit J.

Mr. Miller: I offer in evidence the translation.

1058

Received in evidence and marked Defendant's Exhibit J, part 2.

(Mr. Miller reads Defendant's Exhibit J to the jury.)

By Mr. Miller:

Q. The plaintiff testified that on that same occasion of September 5th, 1915, he made you an offer that he would guarantee you \$1,000 on your order if you would buy these citrons from him. Did he ever make any such offer to you? A. No, sir.

Q. Did you ever ask any such guaranty from him? A. No, sir.

Q. As a matter of fact, you say your order was how much at that time? A. 1,200 esrogim.

1059

Q. And how much was your average profit in years gone by on 1,200 esrogim? A. About \$300 or \$350.

Q. How much as a rule was your profit on a complete set of esrogim, an average? A. From 25 to 35 cents.

Q. Can you tell us how you came to buy of Mr. Saland 30 esrogim about September 13th, 1915, which were esrogim coming from Greece?

Mr. Fried: That is objected to.

1060 *Defendant's Witness, David Werbelowsky, Direct*

Mr. Miller: I wish to say they tried to show—

The Court: Then draw it out by competent testimony.

Q. What conversation did you have with Mr. Saland if any concerning this purchase of 30 esrogim for which you paid, Plaintiff's Exhibit 21, \$80? (No response by the witness.)

By the Court:

1061 Q. Did you buy 30 esrogim? A. Yes.

Q. When? A. About the 13th of September.

By Mr. Miller:

Q. How did that come about, what was the transaction? (No response by the witness.)

By the Court:

Q. Did you buy it directly from Mr. Saland? A. Yes.

Q. Did you see him? A. I saw him after it was bought.

Mr. Fried: That is objected to.

1062 By Mr. Miller:

Q. You did not buy it personally? A. No, I sent someone to buy it.

Q. You sent somebody to buy it? A. Yes.

Q. Who was it? A. Mr. Dogin.

Q. To whom did you furnish those 30 esrogim?

Mr. Fried: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. To customers away out at the Pacific Coast who telegraphed to us they must have it notwithstanding

*Defendant's Witness, David Werbelowsky, Cross* 1063

our information to them that we are not going to do any esrogim business, and we are not going to deal with it, they asked us by telegraph to buy it for him and we did, and sent it out.

Q. You told them at the time you sent that out, you gave them full information as to what kind they were?

A. Who?

Q. The customer, you informed him of the fact that they were Greek esrogim? A. Yes, after we sent out a postal card, they telegraphed to us anyhow to get the Greek esrogim, and we had to buy those thirty to satisfy them.

1064

Q. This was the only 30 that you bought? A. Yes.

Q. You did not buy another one? A. No.

Q. From nobody? A. No.

Mr. Miller: You may cross-examine.

*CROSS-EXAMINATION by Mr. Fried:*

Q. Isn't it a fact that you have been dealing both in Palestine citrons and Triest citrons? A. Yes.

Q. What do you mean by Triest? A. Other than Palestine.

Q. From where? A. I don't know.

Q. What? A. I don't know.

1065

Q. How long have you been in the business? A. Eighteen or twenty years.

Q. You don't know what is meant by Triest citrons? A. When he mentions Triest, it means it is not Palestine.

Q. What are they? A. Other kinds.

Q. What other kinds? A. Various kinds.

Q. From where? A. From Marko, from Turkey, from Rapesa.

Q. Where is Rapesa? A. Rapesa, I just learned it was Greece.

1066 *Defendant's Witness, David Werbelowsky, Cross*

Q. Where did you import those citrons from in past years? A. Never from Greece, always from Triest.

Q. You don't know where they came from? A. They came from Triest.

Q. You don't know where they were grown? A. No.

Q. Did you know they were not grown in Triest? A. I didn't know.

Q. Do you know where Triest is? A. Yes, Austria.

1067 Q. You did not know there were any citrons in Austria? A. I don't know whether they grow there or not. I was never there myself.

Q. Did you ever hear of Parga? A. Yes.

Q. Where is that? A. In Greece.

Q. Did you know that citrons came from there? A. I believe, yes.

Q. You are not sure? A. No, I am not sure.

Q. Were you very much really interested in Palestine? A. I was.

Q. Very much? A. Yes.

Q. You said that the reason why you bought Triest citrons was to supply your customers who insisted on it? A. Yes.

1068 Q. Reformed Temples? A. Yes.

Q. Tell me any reformed temple in this city that uses citrons on Tabernacle holidays, mention one. A. There is a Portuguese congregation here.

Q. Is that a reformed temple? A. Semi.

Q. Where Dr. Mendes preaches? A. They are not as strict as the Russian orthodox.

Q. Do you mean to tell us Dr. Mendes' synagouge is a reformed temple? A. As far as the tendency towards Palestine is concerned.

Q. Don't you know that the Portuguese agree with everybody in their orthodoxy? A. I am referring to the esrogim outside of Palestine.

*Defendant's Witness, David Werbelowsky, Cross* 1069

Q. I am asking you, don't you know that the Portuguese synagogue is strictly conservative in every respect and Dr. Mendes is one of the orthodox rabbis presiding over it? A. Except as to the question of Palestine esrogim.

Q. If you were interested in advancing the sale of citrons outside of Palestine, would you advertise them, would you advertise any article that you were not interested in advancing the sale? A. We would not advocate it.

Q. Would you advertise it? A. To mention we have it, also.

1070

Q. If you are interested in Palestine, why advertise citrons outside of Palestine? A. We would not, to tell them what they were.

Q. Does not advertising the article advance its sale? A. It depends on what form it is put in.

Q. If you had it, does not it advance its sale? A. If it is advocated, if it is praised, it advances its sale, if it is only an opinion, what we have got, it does not.

Q. Louis Cutler, the new John D. Rockefeller, charged an enormous price, didn't he?

Mr. Miller: I object to that.

The Court: Objection sustained.

1071

Q. Do you consider \$3 an exorbitant price for a citron? A. No doubt about it.

Q. You think it is a tax on the poor, Jewish people? A. Certainly, it is.

Q. Don't you know that the citron is only sold to the well to do in the Jewish synagogue and the poorer classes are supplied in every synagogue with free citrons and they are passed around in the synagogue by everyone who wants to go to pronounce a benediction, so they may do so? A. I don't know, no, sir.

Q. Have you not been lately to the synagogue, lately, on Tabernacle holidays? A. Certainly.



1072 *Defendant's Witness, David Werbelowsky, Cross*

Q. You don't know that every synagogue supplies its poor people? A. Yes, but those who cannot pay 50 cents or a dollar—

Q. What per cent of the synagogue members buy their own citrons? A. About 75 per cent.

Q. Don't you know that if 75 per cent of the members would buy citrons, the output would be in this country at least 250,000? A. If necessary, there are many Jews going to the synagogue that are not members.

Q. Where do they get a citron? A. The sexton has one.

1073 Q. The sexton passes it around to all those who can not afford one? A. Those who can not afford to pay 50 cents or a dollar.

Q. They are bought then by the wealthy people? A. Yes, the first week or so, but the last few days or so to the poor who pay 50 or 75 cents or a dollar.

Q. How much did you want Mr. Saland to make on your citrons. 15 cents? A. That was an agreement, he acted as a commissioner for us.

Q. You say you made 35 cents a citron? A. Oh, yes.

Q. In 1914 how much did you pay for citrons? A. \$1.40.

1074 Q. You also say that you made about \$300? A. About \$300 to \$350.

Q. How much did you sell? A. About 900, I guess.

Q. Does that average 35 cents a piece? A. About that.

Q. Now, I will show you the issue of September 25, 1914, and ask you to look at it.

(The witness examines the paper handed him by counsel.)

*Defendant's Witness, David Werbelowsky, Cross* 1075

Q. At what price do you offer your citrons for sale in 1914? A. \$2, \$3, \$4 and \$5, that is originally, selected goods. They are numbered there.

Q. And you paid \$1.40? A. Yes, for the average. Let me explain, if you please.

Q. I will let you go ahead. A. That does not include those that we find worthless entirely. It does not include the extra lulavim which we had to buy, and it does not include those which we have left over which we sell at 50 cents a piece, this is for those who are particular about the kind.

Q. \$5? A. Yes, which you may find one in 500. 1076

Q. And Mr. Saland must sell you at 15 cents, he has no labor and expense—has Mr. Saland got labor expense? A. I said 15 cents after he has added all his expense.

Q. And including the advertising? A. He does not advertise for us. He made the proposition to us, that he should act as a commissioner and buy for us when he has got the same expense to go there anyhow.

Q. This is your advertisement, isn't it? A. Yes.

Q. Paid by you? A. Yes.

Q. See if you offer any other citrons for sale outside of Palestine citrons. A. It says there distinctly that retail prices are charged for open citrons and the prices are as follows, and they are qualified—it means selected goods from the box. 1077

Q. \$2.50 and up? A. \$2.00 and up, that is for outside trade.

Q. So it is 60 cents on the lowest ones, if you paid \$1.40 in 1914, for the cheapest citron you are selling, you are making 60 cents? A. Not necessarily gross, as you figure it, but net.

Q. You mean net you made? A. Yes, net 35 cents.

Q. What do you call that? A. After we sell all the esrogim, and advertising, the cost of advertising, the cost of clerks.

1078 *Defendant's Witness, David Werbelowsky, Cross*

Q. And to make a living you charge the whole corporation expenses? A. No, proportional to the business we do, yes.

Q. Hasn't Mr. Saland got any losses? A. Not on ours.

Q. Isn't it possible that Mr. Saland also has loss on spoiled goods? A. Not what he sells at wholesale in closed boxes, no.

Q. Does not he sell retail also? A. Yes.

1079 Q. With broken tops, he has not got any losses with broken tops? A. No, they are sold in original closed boxes, no matter what is in there.

1080 Q. See if in this article you are advertising any citrons outside of Palestine, read that and translate it, please. A. Palestine esrogim, Genoa palms, Arizona myrtles, the cheapest market price, wholesale and retail. We are glad to announce through untiring effort and at large cost we succeeded even in this year of the war when transportation is so difficult, we received our citrons and palms in proper time and we hope in this year to be able to satisfy our customers. Our citrons arrived in good condition. Our palms are all selected, large, green and thick. Our myrtles are domestic from Arizona which are the best myrtles, the best leaf which is obtainable in the market. Wholesale prices are charged by the box, and a box contains five or ten citrons. That means when one buys a whole box blind as it comes from the original place, closed and sealed. Retail prices are sold open, and the prices are as follows: For No. 3 esrogim, palm and myrtle, \$2. For No. 2 esrogim, palm and myrtle, \$3. For No. 1 esrogim, palm and myrtle, \$4. From the very selected esrogim, palm and myrtle, \$5. On request we are sending with each palm rings to hold the myrtles and the willows. We request all our customers from the country to send their orders immediately

*Defendant's Witness, David Werbelowsky, Cross* 1081

and to write us how many of each number they desire. Respectfully, Hebrew Publishing Company, 50 Eldridge Street, New York.

Q. Is this a calendar published by your company? (The witness examines the book handed him by the counsel.) A. It looks like it.

Q. I will ask you what year? A. 1913.

Q. Read your announcement in reference to citrons, just translate it.

Mr. Miller: I object to that.

Objection overruled.

Mr. Miller: Exception.

1082

A. "Information. We herewith announce to the book dealers, rabbis, cantors, shoetims, sextons, and congregations, synagogues, and to all esrogim dealers in general that we will have this year citrons, palms, green myrtles, three leaved, with which we will be able to satisfy every one. While we have this year sent out two agents to Palestine and Triest who shall buy for us the finest citrons and palms from Genoa, our agents who journey with the same ship that the palms are in, they take care that the palms are to come in the best manner. Ripe myrtles, three leaved. myrtles which we have domestic from Arizona State are the best that occur in America. We ask you to please send your orders early and write us which kind of citrons you want, either from Palestine or Parga. Respectfully yours, Hebrew Publishing Company, 83 Canal Street, New York."

1083

Q. What became of your sentiment for Palestine?

Mr. Miller: I object.

The Court: Sustained.

Q. That is from Greece, isn't it, from Parga?

Mr. Miller: I object.

The Court: Overruled.

1084     *Defendant's Witness, David Werbelowsky, Cross*

Q. That is Parga, Greece, isn't it? A. Parga is now Greece, yes.

Q. You knew of the edict, didn't you, you knew of the ban of 1891 against Korfu citrons, you knew it, didn't you at the time when you published this calendar? A. Yes.

Q. You had no scruples at all, you did not think it was necessary for you to sell Parga citrons, no wrong at all, was it? A. Not if the people ask for it and insisted on it. The Jews are allowed to sell anything if it is not misrepresented, even if it is contrary to their religious belief.

1085

Q. You do not mean to say anybody would use a citron contrary to his religious belief? A. If it was not misrepresented.

Q. Where is the misrepresentation, that is what we are trying to find?

Mr. Miller: I object.

Objection sustained.

Q. Who misrepresented?

Mr. Miller: I object.

The Court: Sustained.

Q. I show you your calendar issued in 1915, and ask you to read it. A. This I believe is the same plate, the same electrotpe that was used in the previous one.

1086

Q. Exactly the same? A. I believe so, and that was published at the end of 1914.

By the Court:

Q. What do you mean, the end of 1914? A. That is the time we print our almanacs, for the next year.

Q. You mean December, 1914? A. Yes, we print the almanacs for the ensuing year.

Q. Do you mean you were going to bring out the calendar for the year 5,678 at that time of year, in December? A. We have it done already.

*Defendant's Witness, David Werbelowsky, Cross* 1087

By Mr. Fried:

Q. You also mentioned they are Parga citrons? A. Yes, whatever I read before is here now.

Q. In 1914, did you have a dispute with Mr. Saland regarding the price of citrons? A. Yes, sir.

Q. You went to arbitration, didn't you? A. Yes.

Q. Didn't Mr. Saland then tell you that, after you had that dispute, that in the future he is not going to take any advance prices from you? A. I can't understand you.

Q. After you had that dispute in 1914, didn't Mr. Saland then tell you that in the future he is going to sever the past relations, and in the future he will have to make the price as he sees fit? A. No, sir. 1088

Q. You say you never met Mr. Saland's brother Aaron before today? A. I never saw him before today.

Q. Was not he up to your place of business to collect bills? A. Not that I know of.

Q. Will you swear to it? A. I did swear.

By the Court:

Q. You mean you are not swearing he was never in your place of business? A. Oh, no—that I never saw him before. 1089

By Mr. Fried:

Q. When you had a conversation with him on September 5th, 1915, what was the word you used with him? A. I don't remember the date, if you will tell me to which one you refer to.

Q. The second time he came up to see you in the latter part of August, the first time, and then he came up to see you in the latter part of September. A. He came to see me three times.

1090 *Defendant's Witness, David Werbelowsky, Cross*

Q. In the early part of September, about September 5? A. I don't remember the date. I only know he came three times.

Q. When the question about price came up? A. That was the second time.

Q. What was the conversation you had the second time? A. I related that already.

The Court: Do it again.

The Witness: The second time he come to tell me that he will not get any Palestine esrogim, the only thing he can offer us is the esrogim from Greece, that  
1091 he brought, and that will cost the minimum \$3.

Q. What did you say? A. I will let him know. I am going to consult with my associates and I will let him know.

Q. At that time you did not offer any lower price? A. No.

Q. You did not tell him it was too high? A. I asked him what is the matter it is \$3—

Q. I am asking you what you said. You said you would consult? A. That was not an offer. I simply asked him why is it \$3, and he said because it is expensive and there are not many that come in.

1092 By Juror No. 10:

Q. When he told you the price was \$3, didn't you tell him this was not in accordance with the previous agreement you had with him? A. I did not tell him because he did not tell me the cost price.

Q. He mentioned the price, they will cost \$3? A. They will cost \$3.

Q. Didn't you tell him this is not in accordance with our previous agreement? A. If it cost him \$2.85 it would be.

Q. You did not call his attention to it? A. No, nothing at all. I told him I would consult with my associates and let him know.

*Defendant's Witness, David Werbelowsky, Cross* 1093

By Mr. Fried:

Q. Then he came up to see you again? A. Yes.

Q. When was that, how long after? A. A few days later.

Q. Did you send for him? A. No.

Q. You said you told him you would consult the directors? A. Yes, and a few days later he would come up and I would let him know.

Q. Then he came up? A. Yes.

Q. What did he tell you then? A. He asked me what is the result, will you buy the esrogim, and I told him no, that we will not handle Greek esrogim. 1094

Q. You have handled it in past years?

Mr. Miller: I object to that as all gone over.

The Court: Objection overruled.

A. We did handle a small number, a small amount for a few customers that we had that wanted them, but our trade for 95 per cent was Palestine esrogim.

Q. It was not the price at all? A. It was not the price at all. I did not argue with him about the price, we were not interested.

Q. You were not interested in the price at all? A. No.

Q. At the meeting of the board of directors, were you interested in the price? A. We discussed the question whether we should handle it. We certainly spoke about the price. 1095

Q. Did you know there were no Palestine citrons then? A. We did. I have sent over a man by the name of Satz, who testified here, and asked him to go several places and find out if we could get Palestine esrogim, and he reported me back no Palestine esrogim to be had.

Q. The price did not interest you at all? A. No.

Q. You stated in your article which you admitted to the Court referred to the plaintiff—



1096 *Defendant's Witness, David Werbelowsky, Cross*

Mr. Miller: I object.

The Court: Sustained.

Mr. Miller: I move to strike that out as an assumption of counsel.

The Court: Strike it out.

Q. You stated in your article that certain dealers had citrons at 10 cents apiece? A. I did not state so.

Q. When you inserted this article, you knew that Mr. Saland had imported a lot of citrons? A. We knew that he imported citrons, yes.

1097 Q. You said in the advertisement in 1914 that you had considerable trouble and effort to get the citrons? A. Yes.

Q. Those were the citrons you purchased from Mr. Saland? A. Yes, we considered him as our agent for buying.

Q. You meant the untiring effort that Mr. Saland had? A. Yes.

Q. In 1915 he also used the same words, didn't he, "untiring efforts"? A. I don't know, he did not relate that to me, but he related to me in 1914 that he passed by and he was afraid of being stopped on the way to New York when he came from Alexandria, that was at the time that the war broke out, in August.

1098 Q. You said about the other citron dealers—did you know any others? A. Certainly.

Q. In 1915 that imported citrons? A. Yes.

Q. Who? A. Cutler. From the advertising, there was about seven or eight advertisements in the various newspapers of different people.

Q. I am asking you, do you know anyone else that imported citrons besides Cutler, and Saland, and Goldberg? A. From my own knowledge?

Q. Yes. A. No, sir.

*Defendant's Witness, David Werbelowsky, Cross* 1099

Q. The only people you knew practically were Saland and Cutler? A. Mr. Saland was the one that we ordered from. Mr. Cutler got no order from us, and we had no dealings with him, in 1915, neither with Mr. Goldberg.

Q. You stated in your article that citrons cost 10 cents apiece? A. I did not state so. Probably. We drew the inference that it might cost 10 cents apiece.

Mr. Miller: I object to counsel taking an extract unless he refers to the article itself and reads it, because it is not what counsel says that he has stated.

1100

The Court: Read the particular sentence.

Q. Did you read the exhibits that were offered in evidence here of the two articles where it says that Mr. Saland, the great importer—did you read that? A. The one that was denied.

Q. The two articles, September 8th, one in the Jewish Daily News and the Morning Journal, where it relates the story of Mr. Saland? A. Yes.

Q. In there it states that Mr. Saland did not have any citrons from Palestine? A. It says that 12,000 citrons were—

Q. It states there he did not have any citrons from Palestine? 1101

Mr. Miller: I object.

The Court: Overruled.

A. I do not think it does, unless I see the article.

Q. Did Mr. Saland in the conversation at any time tell you what those citrons cost him? A. In what year?

Q. 1915? A. No.

Q. Did not he tell you on the second conversation when you said: "How is it that citrons are \$3 apiece," didn't he tell you at all that this year they come

1102 *Defendant's Witness, David Werbelowsky, Cross*

higher"? A. In a general way, yes, he said there are not many brought over and they cost more this year than before, in a general way, but no detail.

Q. You are in the business of publishing Hebrew books? A. Yes.

Q. Is there any other concern in this city that publishes books in Hebrew or Yiddish? A. Yes.

Q. Who are they? A. Some of the newspapers.

Q. I mean publishing companies. A. The Block Publishing Company publishes books of Jewish interest and the Hebrew prayer book.

1103 By the Court:

Q. Do they handle citrons? A. I think they do.

By Mr. Fried:

Q. You said a little while ago, when I began to question you, that you did not know where citrons came from outside of Palestine, is that right? A. When it was spoken of Triest, I did not know from the particular place where it came from.

Q. When did you first find out? A. I do not know today where they come from—if they are bought from Triest, there are various places, they grow.

1104 Q. Have you mentioned all the places where they occur? A. I did not mention any place.

Q. Don't you know? A. There are numerous places.

Q. Do you know? A. No, I have never been there. I knew of some few names mentioned in general.

Q. What names have you heard? A. Parga, and Rapesa and Korfu, I heard.

Q. Do you know whether there are any citrons in Korfu? A. I do not.

Q. You don't know? A. Why should I know?

Q. You say that now? A. I say it now, I don't know only from what I heard.

*Defendant's Witness, David Werbelowsky, Cross* 1105

Q. You don't know? A. No.

Q. Did you know where Mr. Saland had obtained his citrons? A. What year?

Q. 1915? A. He told me where from.

Q. Where? A. From Piraeus.

Q. That is all he told you? A. That is all he told me.

Q. Is that right? A. Yes.

Q. You would not change your testimony, would you? A. No.

Q. (Reading.) "Those citron dealers have seen that they cannot procure any citrons from Palestine so they travelled over to Korfu, Greece, and bought out a big stock of Korfu citrons." Is that true? A. That is in the article, yes, that is true. 1106

Q. How do you know? A. Because Korfu is in Greece and Piraeus is the port of Athens, also in Greece.

Q. Didn't you just say that you did not know where those citrons were grown? A. I did not know where—that he bought it from—where he bought it from, except what he told me.

Q. Then when you said that in that article, did you then know where they came from? A. I did not know—all over Greece, it includes Korfu. 1107

Q. You said as far as you knew, you knew they came from Piraeus— (No response by the witness.)

Mr. Fried: I move that the latter part of his answer be stricken out.

The Court: Motion granted.

Q. You said you knew they came from Piraeus? A. Yes.

Q. Did you have any direct information they came from Korfu? A. I did not.

Q. Still you made that statement in the article?

1108 *Defendant's Witness, David Werbelowsky, Cross*

Mr. Miller: I object on the ground it speaks for itself.

The Court: Overruled.

A. Yes.

By the Court:

Q. Did you know of dealers who had gone to Korfu? A. Direct to Korfu?

Q. Yes. Any dealers who had travelled over to Korfu? A. Yes.

1109 Q. Who, that year? A. Mr. Cutler made a statement—

Q. When did you find that out, when he made the statement on the stand here the other day? A. No, I spoke to him sometime.

Q. And had you spoken to him at the time when this article was written? A. No.

Q. At that time did you know any dealer who had gone to Korfu? A. Not at that time. It was later.

By Mr. Fried:

1110 Q. Then you say: "Then ask yourself why should these unclean goods cost dear, and why it should require great pains to bring to America. It seems they all know that Korfu citrons are always cheapest in the market because not all the citron dealers buy them." You did not know whether there were any citrons at all, did you? A. I understood—

Q. Did you know? A. Did I know what?

Q. Whether there were any citrons grown in Korfu? A. From what I heard, I knew, yes.

Q. Where did you hear it? A. Many occasions.

Q. Where? A. Korfu esrogim.

Q. Where? A. Here in the city.

Q. Did you ever have Korfu esrogim? A. No.

Q. Give us the name from whom you hear it. A. A number of people, about Korfu esrogim.

*Defendant's Witness, David Werbcloowsky, Cross* 1111

Q. That is the best answer you can give? A. Yes.

Q. You say the answer is that Korfu citrons cost only a trifle, very little, perhaps 10 cents a citron. That is untrue as far as you know?

Mr. Miller: I object.

Mr. Fried: Question withdrawn.

Q. You have no knowledge of that, have you? A. Not exact knowledge, no, sir.

Q. You have not any knowledge? A. Well, from the conditions prevailing then, we believed that it cost that much.

1112

By the Court:

Q. Prevailing where? A. In Greece, that the other countries could not go there to buy esrogim there, Russia was closed up, and Austria, and it was only the American market that could buy esrogim.

By Mr. Fried:

Q. Then you say further: "But it was agreed amongst themselves that they should circulate the report that citrons are scarce and very high-priced in order to blind the public and it should not inquire what kind of citrons they were." what did you mean by that? A. I mean by that, that because the announcement in the paper that year did not advertise what citrons they had, they did not mention whether Palestine, Greek, or Korfu, or what, not at all, and in another advertisement in 1915, we noticed that, and that was the main reason why we wanted to warn our trade, that they should be guided and ask what kind they are getting.

1113

Q. The fact it did not state, is that a misrepresentation?

Mr. Miller: I object.

The Court: Objection sustained.

Recess to March 2nd, 1917, at 10:00 A. M.

1114 *Defendant's Witness, David Werbelowsky, Cross*

New York, March 2nd, 1917.

DAVID WERBELOWSKY, a witness on behalf of the defendant, resuming, testifies as follows:

*Cross-examination resumed by Mr. Fried:*

Q. You told the Court that the publication of the article was taken up at a meeting of your board of directors? A. Yes, sir.

Q. And it was passed upon? A. Yes, sir.

1115 Q. Did you have any other meetings of the board of directors with reference to— A. I beg your pardon, it is not the entire board of directors, it is four officers.

Q. Four officers were there? A. Yes, we usually conduct our business by meetings of four.

Q. Did you discuss the question of taking further measures against Mr. Saland?

Mr. Miller: I object.

The Court: Objection sustained.

Q. Did you pass on the matter of sending out a wagon with a sign on it?

Mr. Miller: I object to that.

1116 The Court: Objection overruled.

Mr. Miller: Exception.

A. We passed upon the question of putting the sign on the wagon in front of our door. Our wagon stands in front of our premises three-quarters of the day, and we wanted to announce to people who would come up and ask for esrogim that we have not got them. Our premises—

Q. I am not asking you that. I am asking you whether your board of directors passed a resolution that a wagon with a sign, a copy of which was introduced in evidence, was authorized—

*Defendant's Witness, David Werbelowsky, Cross* 1117

Mr. Miller: I object to that as already answered.

The Court: Objection overruled.

Mr. Miller: Exception.

Q. Was it authorized? A. Yes.

Q. The driver was in your employ, the driver of that wagon? A. Yes.

Q. Did you issue instructions to the driver where to go? A. No special place where to go, in his usual course of business to deliver goods.

Q. When did you send that sign out, on what day? A. I don't remember. It must have been about four or five days before the holidays. 1118

Q. Didn't you tell him to go in front of the place where people were buying citrons, in front of the stores? A. No, sir.

Q. Are you sure about that? A. Positively.

Q. The last few days was the days he delivered goods also? A. He delivers every day.

Q. Did you, at your director's meeting, discuss taking any further steps against Mr. Saland?

Mr. Miller: I object to that as incompetent, irrelevant and immaterial, and not within the issues. 1119

The Court: Objection overruled.

Mr. Miller: Exception.

A. A circular.

Q. Yes? A. We may have allowed circulars to our customers.

Q. Did you distribute them? A. I don't remember of any.

Q. Will you state that you did not issue circulars on the street? A. I don't remember of any circulars. If you show me the circulars, I may recollect.

Q. Was the circular authorized by the board of directors?



1120 *Defendant's Witness, David Werbelowsky, Cross*

Mr. Miller: I object to that as incompetent, irrelevant and immaterial, and not within the issues.

By the Court:

Q. Was any circular authorized? A. I don't remember of any circular that was distributed.

The Court: Objection overruled.

Mr. Miller: Exception.

By Mr. Fried.:

1121 Q. Did you issue any circular under a fictitious name? A. No, sir.

Q. I show you this circular and ask you to read it to yourself. A. I know nothing about it.

By the Court:

Q. You never saw it before? A. No, sir.

By Mr. Miller:

Q. What is the answer? A. I never saw that before.

By Mr. Fried:

1122 Q. I show you this paper, Exhibit 30 for identification, and I ask you whether you saw this.

(The witness examines the paper handed him by counsel.)

A. I believe I did.

Q. That was the article, wasn't it?

Mr. Miller: I object.

The Court: Objection sustained, until the prohibition is in, you can not get the recall. There is no evidence now of any statement by twenty-one rabbis, before the jury, and you will not get in any recall until that goes in.

*Defendant's Witness, David Werbelowsky, Cross* 1123

Q. You saw this on the day it was published, September 29th? A. It may have been a day or two later, I don't remember.

Q. Is Dr. Harkaby in court? A. I don't think so.

Q. I will show you this dictionary, and will ask you whether this is published by your company, and is it Dr. Harkaby's dictionary?

Mr. Miller: I object.

The Court: Overruled.

Mr. Miller: Exception.

Q. Look at the word "poss." A. Yes. 1124

Q. Tell me the last definition that appears there under the word "poss."

Mr. Miller: I object.

The Court: Sustained.

Q. You understand Yiddish, do you not? A. I do.

Q. You understand English? A. I do, I think.

Q. This is a dictionary published by Dr. Harkaby?

Mr. Miller: He has already stated so.

A. Yes.

Q. Is this an authentic dictionary of the Yiddish language? 1125

Mr. Miller: I object.

The Court: I do not know what "authentic" means in that connection.

Q. Is it a recognized dictionary?

Mr. Miller: I object.

Q. How long have you been in the publishing business? A. Nineteen years.

Q. You publish books in Yiddish translated into English? A. Yes.

1126 *Defendant's Witness, David Werbelowsky, Cross*

Q. And from English into Yiddish? A. Yes.

Q. You are familiar with the various Yiddish publications of various books? A. Yes.

Q. Are you familiar with the various dictionaries that are issued from English into Yiddish and Yiddish into English? A. Yes.

Q. Is this dictionary that you now have in your hand a recognized authority on translations from Yiddish into English?

Mr. Miller: I object.

The Court: Overruled.

1127

Mr. Miller: Exception.

A. It is.

Q. Now, I will ask you to look at the word "poss" in this dictionary. A. Yes.

Q. And give me the last idiom that appears under the word "poss."

Mr. Miller: I object.

The Court: Sustained.

Mr. Fried: Exception.

The Court: If you want to put it in as part of your direct proof, you are entitled to do so.

1128

Q. Read the whole definition of the word "poss."

Mr. Miller: Same objection.

The Court: Overruled.

Mr. Miller: Exception.

A. "Poss, a girder, a belt; plural, possen to gird around with a belt, a line, streak, stripe, to draw a line with a pen, a streak of light, a strip of cloth, a strip, strap, thong, a strip of paper, a strip of leather, a strap, a thong; idiomatic, to skin."

Q. Look at page 342 of the dictionary, and read the definition of the English word "skin."

*Defendant's Witness, David Werbelowsky, Cross* 1129

The Court: I will allow no definitions from a Yiddish dictionary of an English word. So far as I know, Mr. Fried, this particular word "poss" is useless because in the original it is a noun, not a verb, and the word you have given here as meaning to skin is a verb.

Mr. Miller: I move to strike it out.

By the Court:

Q. This dictionary gives the word "poss" as a verb, and I presume the word "poss" can be used as a verb.

A. Yes.

1130

The Court: In the article it is "raisen a poss," which is not a verb, but the object of the word "raisen." Therefore, this definition is useless. The word which is there defined is not in the article. There we have a noun, and here you have given me a translation of a verb.

Mr. Fried: It shows the idiom.

The Court: No, it does not show the idiom.

Mr. Miller: I move to strike it all out.

The Court: Motion granted.

Mr. Fried: Exception.

1131

By Mr. Fried:

Q. In your article you state "We find it necessary to announce in order that the public should not be fooled, and that it should not permit itself to be skinned with Korfu citrons."

Mr. Miller: You are not reading the correct translations.

The Court: Dr. Brill's translation is to have it skinned. "We have found it necessary to make this announcement so that the public would not be a dummy and should not permit itself to have itself skinned."

1132 *Defendant's Witness, David Werbelowsky, Re-direct*

Q. "We have found it necessary to make this so that the public should not be a dummy and should not permit itself to have itself skinned with Korfu citrons over which it is prohibited to make a benediction." You did not know anything about Korfu citrons, did you? A. What do you mean by that?

Q. You had no knowledge that any of those dealers had Korfu citrons, did you? A. Certainly, I did.

Q. You did? A. Certainly.

Q. Where did you get that knowledge? A. From the press, from Mr. Saland.

1133 Q. Did you discuss this article last night? A. I did.

Q. With your lawyer? A. Yes, not this article, no, the case, I did.

Q. You went over the article? A. No.

Mr. Fried: That is all.

*RE-DIRECT EXAMINATION by Mr. Miller:*

Q. The word Korfu, is that word used indifferently also to designate not only Korfu itself, the particular spot but in general meaning Greece? A. Yes, sir.

1134 Q. Did you send Mr. Sotz to Mr. Saland to buy or offer to buy any citrons from him? A. No, sir.

By the Court:

Q. Or to Mr. Cutler? A. To no individual except I—

By Mr. Miller:

Q. What did you send him to go out for? A. To ascertain whether there are Palestine esrogim in the market.

Q. Did you ever send, or direct, or instruct, or authorize the driver that was driving this delivery truck

*Defendant's Witness, David Werbelowsky, Re-direct* 1135

to go before Mr. Saland's store and to stop there for the purpose of having the sign read? A. No, sir.

Q. Did you deal in esrogim in any way, shape or form in the year 1916? A. No.

Q. When I say you, I mean your concern or corporation? A. No, sir.

Q. Something was asked you yesterday about a certain advertisement that appeared in the newspaper of your concern about two, or three, or four, or five dollar citrons? A. Yes.

Q. Isn't it a matter of fact that you sold the common citrons known as— 1136

The Court: Ask him for what he sold the common citron.

Q. For how much? A. 1914?

Q. Yes? A. \$1.75 an average.

Q. How much did you pay for them on an average? A. \$1.40.

Q. Those that you say you sold at those prices were wholesale? A. Yes, sir, original boxes as they came.

Q. The citrons that were described by counsel and on which you were interrogated about, two, and three, and four, and five dollars? A. Yes.

Q. What kind of citrons were these? A. Selected from the various classes, boxes, the one, two and three dollars. 1137

Q. Those were for you? A. Yes, in those boxes.

Q. You say a five-dollar citron, you could get one out of five hundred? A. Yes.

Q. And with regard to the four-dollar citrons? A. Yes.

Q. About the same way? A. Probably two or three.

Q. In 1915 did you buy citrons in original packages and how much did you pay? A. \$1.40 from Mr. Saland.

1138 *Defendant's Witness, David Werbelowsky, Re-direct*

Q. Did you buy 200 citrons in original packages?

A. Yes.

Q. What year was that that you bought citrons in original packages after the holidays? A. 1914.

Q. For how much? A. Four or five cents apiece.

Q. When you speak of original packages will you describe what you mean by that? A. Yes, every citron is drapped in jute and packed in a case. Some small boxes come eleven or twelve in a case, and those are not assorted, the small boxes, they are one, two, three and specials, and then there are 100 in a case  
1139 which come directly from the farmers, not assorted at all.

Q. What was the alleged dispute upon which you were asked yesterday which resulted in the arbitration, what was that dispute about, or arbitration?

The Court: We are not going into that. It has been brought out there was an arbitration in regard to price.

Mr. Miller: I want to show there was \$10 there in our bill, that was \$80, a check.

The Court: The arbitration was the year before. The \$80 question was the year after.

Mr. Miller: There has been some discussion  
1140 about some difference of \$10.

The Witness: There was no discussion at all. He owed us \$10 and we deducted it from the bill.

Q. From what bill? A. The thirty esrogim, we paid \$90 for it.

Q. Aaron Saland testified that on September 5, which fell on a Sunday, 1915, he was at your loft which was the salesman's room, a general room of offices and salesman and during the hour of 11 up to 12:30 there was not a person on that floor during that time other than yourself, Mr. Chinsky, the

*Defendant's Witness, David Werbelowsky, Re-direct* 1141

plaintiff and the witness Aaron Saland, except that he could not tell whether there was anybody at the cash place. As a matter of fact during the hours of 11 to 12:30 on September 5, 1915, which was a few days before New Year's, the Hebrew New Year's, of the same year, which fell on September 8th, 1915?

The Court: September 9th.

Q. The eve fell on September 8th, 1915—isn't it a matter of fact that during those hours you have salesmen on the floor and it is your busiest Sunday?

A. Yes, sir, the busiest Sunday in the year.

1142

Q. How many salesmen do you employ at that time, about? A. About eight.

Q. What was your general staff on that floor? A. In the office?

Q. Yes, at the same place? A. About seven or eight more.

Q. You are closed on Saturdays, the entire business of the Hebrew Publishing Company is shut on Saturdays? A. Yes.

Q. You do not do any business on Saturdays? A. No.

Q. You do business, however, on Sundays? A. Yes.

1143

By Mr. Fried:

Q. What was the proportion of the \$1.75 citrons that you sold? A. What do you mean.

Q. You say you sold in 1914 some citrons at \$1.75? A. Closed boxes.

By the Court:

Q. What proportion did you sell at \$1.75 as compared with those at two, three, four and five dollars? A. I cannot remember exactly.



1144 *Defendant's Witness, Barnet Dogan, Direct*

Q. Give us your best recollection? A. I guess about fifty or sixty per cent.

Q. Forty or fifty per cent are sold separately? A. Yes.

Q. Selected goods? A. Yes.

By Mr. Fried:

Q. You did not advertise the \$1.75 citrons, did you? A. Except through the mail.

Q. You did not advertise it in the papers? A. No, sir.

1145 Q. Have you got your books here? A. No, sir.

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BARNET DOGAN, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

*Direct-examination by Mr. Miller:*

Q. You are a member of the Hebrew Publishing Company? A. Yes.

Q. You are no officer, however? A. Yes, a director.

1146 Q. Were you ever present at any conversation between Mr. Saland and Mr. Weberlowsky concerning the purchase or sale of citrons? A. No, sir.

Q. Did you ever say to Mr. Saland that Greek citrons are so much better than Palestine citrons? A. No, sir.

Q. Or anything to that effect? A. No, sir.

Mr. Fried: I move to strike that out. I do not remember any such testimony.

The Court: There has been so much testimony I can't remember.

Mr. Miller: My recollection was—

*Defendant's Witness, Abraham Cohen, Direct* 1147

The Court: If there is no such testimony on your side then there is no harm in having him deny it.

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ABRAHAM COHEN, called as a witness in behalf of the defendant, being first duly sworn, through the official interpreter, testified as follows:

*Direct-examination by Mr. Miller:*

Q. Where do you live? A. 167 Harrison Avenue, Brooklyn. 1148

Q. What is your business? A. Hebrew book store.

Q. Do you know Mr. Saland, the plaintiff? A. Yes.

Q. You know the Hebrew Publishing Company? A. Yes.

Q. You have been dealing in citrons in conjunction with your Hebrew books? A. Yes.

Q. For how many years? A. Seventeen years.

Q. At the close of the season each year, and about two days before the arrival of the Hebrew holidays do you know whether citrons had been sold for less than the usual market price prior thereto? A. Yes, sir. 1149

Q. How much had they been sold on an average, what price? A. At what time?

Q. Take the year 1914? A. One price was three dollars, that was the cheapest price.

Q. 1914, not 1915? A. \$3.

Q. I asked you how much was citrons sold two days before the holidays in 1914? A. The same price.

Q. How much was the price of citrons in 1914 and how much was the price of citrons in 1915, if you

1150 *Defendant's Witness, Abraham Cohen, Direct*

know? A. In 1914 the price was \$3, and \$4, and \$5.

Q. What was the price in 1915? A. In the year 1915 it was \$1.75 and two days before the holidays I paid 50 cents.

Q. When were citrons more expensive in the market, in 1914 or 1915? A. I, myself, will explain that thing. This year, that is just past, the price was \$1.75 and 50 cents.

Q. That is 1916 you are talking of now? A. Yes, I mean 1916.

1151 Q. In 1915 you say the price was \$3? A. Yes.

Q. Could you get less than \$3, any citron, two days before the holidays in the year 1915? A. Not one penny cheaper.

Q. In 1914 what was the general market price of citrons at that time? A. I paid a dollar at Saland's.

Q. In 1915 did you go to Mr. Saland? A. Yes.

Q. Did you have a talk with him? A. Yes, and bought from him.

Q. You bought citrons from him? A. Yes.

Q. What did you say to him and what did he say to you regarding esrogim at that time?

1152 Mr. Fried: I object to that as incompetent, irrelevant and immaterial, and ask on what day was the conversation.

By the Court:

Q. How long before the Feast of Tabernacles did you go there? A. I think five or six days.

By Mr. Miller:

Q. What was the conversation you had with him? A. I said to him, "Mr. Saland, what is the price of citrons this year." He said to me, "The price is \$3, \$4 and \$5." Then I said to him, "Perhaps I

*Defendant's Witness, Abraham Cohen, Direct*

1153

must wait until just before the holidays and then they will be cheaper." And then he said to me, "In the mid-holiday of the Feast of Tabernacles they will cost the same."

Q. What else? A. Then he said to me, "I give you this advice, take the \$3 ones," and he said, "This year no one has citrons except me and Cutler." And I bought only ten citrons for thirty dollars.

Q. Were you present in front of 5 Ludlow Street, which is the corner of Saland's store and Cutler's store, about four or five days before the 22nd of September? A. I was passing by the eve of the holidays, I don't know the date.

1154

Q. What did you see there?

Mr. Fried: I object.

Mr. Miller: It was permitted to bring out on the examination of their witnesses that the people had created demonstrations, anti-citron demonstration because of the publication and I want to show that the case was asking high prices.

The Court: I will allow it.

Mr. Fried: That was not brought out by me. It was brought out by them.

1155

The Court: I know it was not, but you want the jury to infer it.

A. I saw a lot of people there.

Q. What happened there while you were there, what did you hear?

Mr. Fried: I object to any conversation.

The Court: I don't know whether there is any conversation here. I will have to hear the answer first.

A. They were crying out, and then they said—

1156 *Defendant's Witness, Abraham Cohen, Cross*

Mr. Fried: I object.

The Court: Objection overruled.

Mr. Fried: Exception.

The Witness: They said we must go inside there, we must destroy the whole place since they made a trust.

Mr. Fried: I move to strike that out.

The Court: Motion granted.

Mr. Miller: I except.

1157 Mr. Fried: I submit it should never have been admitted.

The Court: I will strike it out. It does not show anything at all.

Mr. Miller: I have a right to show the phenomena the disturbance at that place.

The Court: Objection sustained.

Q. Did you hear outside of that—did the people say anything about prices?

Mr. Fried: Object.

The Court: Overruled.

1158 Q. I ask you did you hear the people say anything about the prices that are being asked? A. They cried out that they had made one combination, one price.

By the Court:

Q. How many people were calling that out? A. I could not count them up.

By Mr. Miller:

Q. Were there a number of persons that you saw there in front of No. 5 Ludlow Street? A. Many, yes, sir.

*CROSS-EXAMINATION by Mr. Fried:*

Q. Where is your store? A. In Brooklyn, No. 167 Harrison Avenue.

Q. How many clerks have you got? A. I am only there with my wife.

Q. You know all about the book business, don't you? A. Yes, sir.

Q. You deal now with the Hebrew Publishing Company? A. I do some business in some things with them and others with other people.

Q. What day was it that you passed by the store? A. What store?

Q. Mr. Saland's store? A. The eve of the Jewish Holidays there at about one o'clock.

Q. How many days before the holidays? A. Six or seven hours before the opening of the holidays. 1160

Q. Didn't you say a few days before? A. No, the eve of the holidays.

Q. You also sell in your store, prayer shawls? A. Yes.

Q. And you are a retailer, are you not? A. Yes, sir.

Q. And the last day before the holidays is a pretty busy day for you, isn't it? A. Yes.

Q. You are very busy? A. My business is never very busy.

Q. So you have time to go around to look around, haven't you? A. Every eve of the Feast of Tabernacles I go about two or three times a day. 1161

Q. Did you stop in front of Saland's store? A. A couple of minutes, that is all.

Q. You know Mr. Saland for a long while, don't you? A. Eight or nine years already.

Q. Didn't you think of going in at all to see him and wish him a good holiday or talk to him, didn't you think it was necessary? A. To whom?

Q. To Saland? A. No, no holiday congratulations.

1162 *Plaintiffs' Witness, Aaron Saland, Direct*

Q. You did not think it necessary to go in and ask him what those riots were about? A. I am always at a distance from them.

Q. How long did you stop in front of the store? A. Two minutes.

Q. Did you talk to any of the people in front of the store? A. I heard one person speaking to the other person and heard them saying that one must go in there and break up a row.

Q. How many people were there altogether? A. I can't remember but they are as many persons as now  
1163 in court.

Q. Did you recognize any of the employees of the Hebrew Publishing Company? A. I saw none of them there.

Q. Did you ask any of those people where they came from? A. I did not ask any one.

Q. You just heard them talk? A. Yes.

Q. In two minutes? A. That is all, I just heard them say, "Let us go in there and make up a row."

Mr. Miller: The defendant rests.

1164 AARON SALAND, recalled in rebuttal, testifies as follows:

*Direct-examination in rebuttal by Mr. Fried:*

Q. Mr. Werbelowsky testified that he had never seen you until in court. Did you see him on any other occasion prior to the time when you went up there with your brother? A. Several times.

Q. When? A. Once when I was a teacher, and interested in Hebrew books, I several times went up to see about books and I saw him and he saw me, too, but the fact that it was—I don't remember though the

*Plaintiffs' Witness, Aaron Saland, Cross*

1165

year, it was 1914, or somewhat later, and Mr. Kazenelenbouden told me, being in the office over there, and asking about books, it was the books of the words of the license by Irving and Mr. Kazenelinbouden asked me whether I want to accept a position in a Brooklyn Hebrew school where he—

The Court: We are not interested in that.

Mr. Miller: I move to strike that all out.

The Court: Motion granted.

The Witness: He told me to apply to Mr. Werbelowsky, he said he was also interested in that school.

1166

Mr. Miller: I move to strike it out.

The Court: Motion granted.

Q. Did you speak to Mr. Werbelowsky at that time?  
A. Yes.

Q. With reference to what? A. The Hebrew school in Brooklyn, and then another time I want to show another fact, when I saw him and when I spoke to him it was in his office and he spoke about five or ten minutes, I was connected in 1915—

Mr. Miller: I object.

The Court: Sustained.

1167

Q. You saw him again? A. Yes.

*CROSS-EXAMINATION in rebuttal by Mr. Miller:*

Q. Did you tell Mr. Werbelowsky on that occasion who you were and what your name was? A. He saw me.

Q. Did you? A. Yes.

Q. Did you give your name to him? A. Yes.

Q. Did you introduce yourself? A. Yes.



1168 *Plaintiffs' Witness, Melek Satz, Direct*

Q. What year was that? A. 1915, in the summer.

Q. Where did you see him then? A. In the office, right in the other end of the loft.

Q. How long a conversation did you have with him? A. It was about five or ten minutes.

Q. You say you saw him once before or after? A. Saw him once before, too.

Q. How long before? A. About three or four months before.

Q. Where? A. In the Hebrew Publishing Company, in the office.

1169 Q. Did you speak to him, did you introduce yourself to him? A. Yes.

Q. You introduced yourself? A. Yes, always I said I was Mr. Saland's brother.

Q. You had another conversation with him? A. Yes.

MELEK SOTZ, recalled for rebuttal, testifies as follows; through the official interpreter:

*Direct-examination in rebuttal by Mr. Fried:*

1170 Mr. Werbelowsky testified that he sent you out in September, 1915, prior to the Jewish holidays to buy Palestine citrons?

Mr. Miller: Objected to as not being rebuttal. He has already testified on the direct that he went to Mr. Saland.

The Court: Objection overruled.

Q. Is that right, did he send you out to find out whether there were any Palestine citrons? A. Not Palestine.

Mr. Fried: That is all. The plaintiff rests.

Mr. Miller: The defendant rests.

*Charge*

1171

The defendant now moves to dismiss the complaint on the ground that the plaintiff has failed to establish a cause of action and on the further ground that it appears affirmatively and conclusively from the evidence of the very plaintiff that the article in question was fully justified under the circumstances and was really true and no proof has been adduced of any damage either special or otherwise and that the alleged libelous article on its face as well as under the proof is not libelous in any sense.

The Court: Motion denied.

Mr. Miller: Exception.

1172

Mr. Miller sums up for the defendant.

Mr. Fried sums up for the plaintiff.

**Charge.**

LEHMAN, J.:

The Court: Gentlemen of the jury, the plaintiff in this case has been engaged for a number of years in the citron business, supplying the Jewish public with citrons for use at the Feast of Tabernacles.

1173

In the year 1915 the defendant published a certain article in the Yiddish language in three papers, The Jewish Morning Journal, the Wahrheit and the Day. The papers being published in the Yiddish language, we may assume, have been read only by the Yiddish public and are intended to make a special appeal to the Yiddish public, and by the Yiddish public, I mean the Yiddish public who have not yet so assimilated the customs of America that they read the English language. It is that part of the Jewish public which has not yet become assimilated entirely in this country. You must bear that in mind hereafter.

1174

*Charge*

This plaintiff says that article was promiscuously published concerning him and that it constitutes a false and defamatory libel; for the damages which he claims that that article caused him, he now asks compensation from the defendant.

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Gentlemen, in the first place, I want to impress upon you that this is an action for libel. By that I mean it is an action in which the plaintiff must prove that the article was published concerning him, referring to him, that it would be so understood by people reading the article and that a person reading that article would understand from the article itself that this plaintiff was charged with some moral wrong or some act which would diminish his reputation as a citizen or as a business man.

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If he makes out these elements, if he shows to you that the article was published concerning him, that a person so reading would understand that reference was made to him, and that a person reading it would reasonably infer that this plaintiff was being charged with something which would hold him up to the contempt of the public and diminish his reputation as a business man, then the plaintiff has established his case and the defendant can justify that article only by proving it was true.

On the other hand, gentlemen, this is not a case of unfair competition or anything of that kind. It is a case of libel. If this article was published concerning the plaintiff, if it holds up the plaintiff to the buyers of that article as a man not fit for the confidence of the public, if it charged him with some act which the public reading that paper would consider an act which a decent business man would not do, then the defendant can justify that publication, as I say, only by showing that it was true and true throughout its entire extent.

*Charge*

1177

Gentlemen, therefore those are going to be the questions presented to you for decision. The articles as I stated was written in Yiddish, so we have an additional difficulty over the usual libel cases, we first have to determine what its meaning was as written, that is how it should be translated into English; neither you nor I are expected to understand Yiddish and we have to go to the translation to determine what was actually written.

For the purpose of explaining the article to you I will read it. I will first read to you the translation given by Dr. Brill, the differences between his translation and the translation as given by witnesses for the defendant are not in most parts substantial. Where I think it is substantial I will read you the difference after I have read the plaintiff's version of it.

1178

Now, that article states:

"Citrons. A duty to publish, to make public.

"The Hebrew Publishing Company, who in years past have not omitted a single year to supply its numerous customers with citrons from the land of Israel at the cheapest price, finds it now necessary to make known to the Jewish public the following: We have received this year no citrons from the land of Israel and with the exception of the few American citron dealers no one has received any citrons this year from Palestine. No explanations regarding this need be made, because all know that from the countries that are involved in the war nothing can be brought and just as we were unable to bring books from Russia or Austria, we have also been unable to bring citrons from the land of Israel, and thus honest citron dealers have been left this year without citrons. No pains, no money means were of avail and as a matter of course, when there are no citrons one cannot make the benediction. We would not have found it necessary to

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1180 ..

*Charge*

make this explanation if it were not for the abominable thing that has been committed by a few citron dealers. Just listen and be astounded at what may occur.

“In view of the fact that among the citron dealers in America there are a few who have appealed every year to the public through announcements in the papers, that no other citron except Land of Israel citrons should be bought, because thereby assistance is given to the up-building of the Holy Land and support is given to thousands of colonists in the Land of Israel,  
1181 that make a living by planting citrons.

“These very citron dealers see that they cannot obtain from the Land of Israel any citrons, journey or travel to Korfu in Greece and bought there a big stock of Korfu citrons, and these very citrons which come from a country the soil of which is saturated with Jewish blood and which have been prohibited by all the renowned Rabbis of Europe, they advertise that they have after exceedingly great difficulties received only a small number and that it cost them very dear.

“Now comes the question.

“Why should these ritually unclean goods have cost so dear and why have there been such exceedingly  
1182 great difficulties in bringing them to America? All know without any doubt that Korfu citrons are always the cheapest in the market because not all citron dealers will buy them and as a matter of course an article which has a fewer number of purchasers has to be and must be cheap.

“Besides that the two main markets for citrons, Russia and Austria, are closed. Then why should it have been so very dear, and bringing them over should not have been so very difficult because Greece has as yet not entered the war.

“The truth is that Korfu citrons really cost a trifle, a little, perhaps ten cents a citron, and enough has

been brought to suffice for preserving after the Holy Day, but an agreement was reached by them that a rumor should be spread that there are only a small number of citrons and that they cost very dear, in order to throw dust in the eyes of the public, so as not to ask what kind of citrons they are, and an extravagant price could be asked for them. We have found it necessary to make this so that the public should not be a dummy and should not permit itself to have itself skinned for Korfu citrons over which it is prohibited to make a benediction.

“All Rabbis, Cantors, Shochtim, Sextons, Presidents of Synagogues and Societies, and all those who are engaged in public work must make this known to their congregations and demand of them not to buy any citrons this year. It is thus preferable not to make any benediction over the citron rather than to make a benediction over a Korfu citron which was grown on the soil and the earth that is saturated with Jewish blood.

“It is a much more religious duty to give the money which the citron will cost to the Relief Fund for unfortunate and unhappy brothers and sisters in the war-ing country who need so greatly our assistance. It is also a better religious duty to give the money to the Talmud Torahs the Hebrew Schools and the Yeshibeths, the seminaries of the Land of Israel which are in danger of being closed because of the war.”

Gentlemen, as I have said, the first thing for you to consider is does this article refer to the plaintiff. You will notice that the plaintiff is not mentioned there by name. Nevertheless an article may be so written that those people who read it would naturally understand it referred to a certain person, either individually or as one of a group.

Now, if the people who read that article would naturally understand from all the circumstances of the

1186

*Charge*

case that it referred to the plaintiff, then for our purposes that article referred to the plaintiff. Whether the defendant was writing that article, having in mind a large group or not, if a person reading that article would reasonably understand that that article referred to the plaintiff, then for all purposes of this case it is the same as if the defendant had set out a dozen names including the plaintiff. That is all you need consider on that element.

As far as that is concerned the two translations do not differ at all, so I am not going to go into reading  
 1187 you the other translation, in reference to that one question.

Then, however, you come to the most serious part of this case, does that article fairly read attribute to this plaintiff acts which would hold him up before the community as having done something worthy of condemnation, something which would reasonably affect his reputation as a man and as a business man.

Gentlemen, if that article were written in English and the words of that article were clear and definite in their meaning, it would then become my duty to tell you this article is libelous or is not libelous. That is ordinarily a question of law for the Court, but where  
 1188 the words of an article are capable of different interpretations, then it becomes the duty of the Court to explain to the jury which possible interpretation would be libelous and leave to the jury the question of whether that interpretation is one which would reasonably be put upon the article.

For that reason, gentlemen, it will be again necessary for me to examine the article and to point out to you which construction of it would make it libelous and which constructions would not make it libelous.

The plaintiff has said in his complaint that the meaning of the aforesaid article and the charges that the de-

*Charge*

1189

fendant sought to make and did make against the plaintiff are that the plaintiff in collusion with a small number of other citron dealers was misleading the Jewish public and inducing them to buy Korfu citrons which were of no value whatsoever, unclean, repulsive to the Jewish instinct and prohibited by the Rabbis, by falsely representing they were Palestine citrons, and that thereby the plaintiff was attempting to cheat and skin the Jewish public.

Gentlemen, if you think that that article is to be reasonably interpreted in that way, I need not tell you that would constitute a libel on the plaintiff.

1190

I will say at the outset, that there is nothing in this article, and I state it as a matter of law, that will enable you to interpret it as charging him with the actual false misrepresentations of his goods as Palestine goods. There is nothing in the article that so charges, but what still remains of the claim of the plaintiff is that he was misleading them by his various acts to take citrons which were repulsive to the Jewish instinct and prohibited by the Rabbis, in the belief that they were proper citrons for use at the Feast of the Tabernacles and that he did that dishonestly, by dishonest means, and in an attempt to cheat and skin the Jewish public.

1191

If that is found as the reasonable interpretation of the article, then of course even without actual misrepresentation, actual stating that they were Palestine citrons, it would constitute a libel on the plaintiff.

Firstly, gentlemen, I want to call your attention again to the fact that this is not a case of unfair competition. It is a case of libel. You may think it is not fair for one dealer to run down the articles which another dealer is handling, which he is not handling. You may think that because this defendant went out of the market for Palestine citrons that it was not his duty or his place to tell the public to buy Korfu citrons,



1192

*Charge*

but that is not the question here. A man has a perfect right so far as concerns this action, leaving aside all questions of morals or all questions of other remedies, a man has a right to say to the public, the goods which my competitor is handling are not goods which you are going to find useful for such and such reasons, and if those reasons are good or if they appeal to the public and are true, that is the public's business, but if he goes and says "My competitor is dishonest, my competitor is dealing in goods which an honest business man would have no right to deal in," then it constitutes a libel. So they had a perfect right to say to the public, "Palestine citrons come from a land where they are grown by our own people, if we cannot get those citrons then I consider it a great religious duty, a high duty to give the moneys which we would ordinarily pay for the citrons for the use of our suffering brethren in the War Zone or for use in Palestine"—if he does not also state untruths about the goods, that is running down the goods themselves improperly and running down the acts of his competitor—that is the point you have got to keep in mind all the time. Has this defendant passed the line of honest argument and made statements which were false and defamatory and holds up this plaintiff to shame before the public.

1194

Gentlemen, I suppose most of you would naturally say, "Well, what difference does it make whether a man brings over Korfu citrons or Palestine citrons, there ought to be no such difference made, and I don't see that a man is being charged with anything wrong in bringing over Korfu citrons instead of Palestine citrons, when I don't see there is any difference between them."

Again I call your attention to the fact that the question is how would this article strike the people who are reading it, would it impute moral wrong to the people

who it was intended should read it? If it does, what you think about it would not make any difference, it is how would these people reasonably feel? Would it hurt this man's reputation in the very trade where he is working, in the very community where he is living? It might not be any wrong for me to say of the business men on this jury that I don't believe they can figure out the size of an iron girder to hold up a large wall, but if I publish that concerning an architect in an architectural journal it would constitute a libel on the architect.

You have to consider all the time the way in which the article would naturally and reasonably appeal to the people to whom it was addressed. 1196

Then, gentlemen, in considering that, first take up the question of what kind of goods this man was charged with selling? He is charged with selling Korfu citrons, coming from a land saturated with Jewish blood. That would constitute in itself absolutely no libel, because any man has a right to bring over goods and any Jew would be considered even by a Jewish community to have a right to bring over goods from a country where there has been Jewish oppression, unless there is some Jewish law forbidding it, but the article goes farther and says, "Just as those citrons which come from a land where the ground is saturated with Jewish blood and which is prohibited by the eminent Rabbis of Russia, so these men advertise that by untiring effort they obtained a small number and it cost them a great price." There we have the word "prohibited." And then it says, "Then ask yourselves why should these ritually unclean goods cost dear?" There is a difference in the translation. The defendant's expert witness testified that that should read, "Then ask yourselves not why should these 'ritually unclean' goods but why should these 'prohibited' goods cost dear?" 1197

Gentlemen, would the Jewish public naturally look upon a man who was bringing over citrons from Korfu which were prohibited or ritually unclean as a moral wrong?

That, gentlemen, depends entirely, I will charge you, as a matter of law upon the meaning which would naturally be put upon the word "prohibited" or "ritually unclean." What I mean by that is just this, gentlemen. In the Bible which is followed by the Jews, particularly the orthodox Jews, the command appears that "on the 15th day of the Seventh month, when ye  
1199 have gathered in the fruits of the land, ye shall keep the Feast of the seven days, and on the first day shall be a solemn rest and on the eighth day shall be a solemn rest and ye shall take you the first day the fruit of goodly trees, branches of palm trees and boughs of thick trees and willows of the brook and ye shall rejoice before the Lord your God seven days."

The Jews in order to follow out that command take the citron which has been interpreted as the fruit of the goodly tree, the branches of the palm tree, the boughs of the thick tree, which have been interpreted by the Talmud to mean the myrtle, and the willows of the brook, and they bring them into the synagogue and  
1200 they pronounce there a benediction upon those articles.

The Jews who go to their dealers naturally expect to get from those dealers citrons which will be proper for use according to their own law. It would be an absolute moral wrong and I would so charge you, if instead of being supplied with citrons they were supplied with lemons because that is well understood, that it must be a citron, but the question is how far, when the word prohibited is used or the words ritually unclean is used in this article, it means goods which some rabbis would forbid or whether it means goods which no decent Jew of the orthodox kind would ever use in a synagogue.

*Charge*

1201

In other words gentlemen is there an element there of deceit, is he charged with selling religious goods which were irreligious. If he is, that in itself would be sufficient to constitute libel. If he is not, the mere fact of his being charged with selling Korfu citrons prohibited by the rabbis would not in itself and standing alone make out a libel. In that regard, gentlemen, you also have to consider what would the Jewish public naturally understand by the word "ritually unclean" or "prohibited."

It has been testified to here and I think there is no question about its truth, all the experts agree on it, that the actual rules which all the Orthodox Jews follow have been authoritatively stated several hundred years ago. The Bible contains them first, the Talmud gives its interpretation of the rules of the Bible and the Code of Laws called the Schulehan Brach compiles every other command which has come into existence a few centuries ago. 1202

It is hard enough for them to follow those particular rules as given in those books, but still questions do come up as to further interpretation of those rules and there is no power in the Jewish religion which has authority to pass upon those particular new points which have come up in the last few hundred years. There may be a weight of authority that says that it is wrong to do certain things and then most people would follow them. Individuals, however, depart from that. 1203

Gentlemen, you have to bear that in mind when you consider the meaning of the word "prohibited"—that the Jewish people would naturally know that there was no power which could actually and thoroughly prohibit a Korfu citron from use within the last twenty-five years except as the community would follow the authority of those men who made the prohibition, whom they consider reliable. Gentlemen if you find that those words taken alone would be innocent then you

1204

*Charge*

must still read them, however, with the whole article.

Does that article use terms that show an actual attempt to mislead the public, not by asking high prices, because a merchant, whether you like it or not, is entitled to get all the money that he can for his goods, and while perhaps you may think that it ought to be a libel, it is not a libel to say of any merchant that he was asking prices that were not justified by the expense, but in this case they go further and they use terms of moral reprehension.

1205

Now, reading those terms of moral reprehension in connection with the whole article does it imply to a person reading it that this plaintiff has imported goods which he ought not to have imported, which the public would not buy if they knew the facts, because they are prohibited, and misled them by throwing dust in their own eyes anyway, into buying them, believing they were ritual goods.

That is the question for you to determine.

Gentlemen, if you find that the plaintiff has established those matters, then, as I say, the defendant must justify them by showing that they are true, otherwise he is responsible for the damages suffered by the plaintiff.

1206

Now, if you decide those two questions in favor of the plaintiff you come to the next question, and you must consider the evidence as to whether these goods were prohibited and ritually unfit, the goods handled by the plaintiff, and whether the plaintiff did mislead the public.

Now, the first point as to whether they were ritually unclean, you have Dr. Drochman's statement and Dr. Klein's statement.

On the other hand you have Dr. Buchler and Dr. Margolies' statement. All of them as far as I can see agree this far, that there is an element of the Jewish

public that wishes to have Palestine citrons. They all agree that certain rabbis in 1891 or 1892 or 1893 issued a prohibition against the use of Korfu or Greece citrons, partly because of the troubles in Korfu, partly in order to help along the Jewish colonists in Palestine. In one case it would be a boycott for reasons against the people who grew them; in the other case it would be a boycott in favor of another section. They have, however, also considered there, gentlemen, one religious question, and that is this—the Bible as I have read to you says “the fruit of the goodly tree.” The goodly tree according to the Talmud is the citron. It is not a lemon tree. Consequently although a citron can be grown on a lemon tree by grafting it would not constitute the fruit of the goodly tree and therefore according to the strict words of the Bible would be an improper thing to use at that festival. Accordingly Dr. Drochman says the reason for this prohibition was also that the Greeks not being Jews would be less careful to not graft the citron upon a lemon tree than a Jew who would grow the citron for the purpose of the ritual. Therefore it was better to obtain the citrons from a Jewish land than from a land where Gentiles were raising the citrons.

1208

You will notice if the prohibition is founded on one ground that is that it was to help along the Palestine colonies, then when you cannot get any fruit from Palestine, the prohibition would have no more reason; on the other hand if it were based on the article itself the prohibition would still continue. Hence this difference of opinion, as to whether there is a prohibition or not.

1209

Gentlemen you must decide. If you find that the plaintiff has been libeled and you come to the question of justification then you must decide whether this article as written is true. Whether there is a prohibition against these citrons and if there is a prohibition, has

1210

*Charge*

this plaintiff misled the public to buying them, believing they were not under a prohibition. I said the defendant must justify the article through its whole extent to make out this defense, and what I mean by that is he must justify every part of the libel. If he justifies only a part and you still believe there are untrue things constituting a calumny against him, constituting a charge which holds him up to contempt, then the libel is still made out, although the truth of the matter may be considered on the question of reducing damages.

1211

That is rather complicated I am afraid, gentlemen, and I will have to come to another point which is rather complicated, too, I am afraid, and that is what damages you are allowed to give.

In this case, if you come to the question of damages, there are two kinds of damages in this case.

1212

There are first the damages that naturally follow from the loss of a reputation. Reputation for a business man is part of his stock in trade. If he was accused of a wrong he may not be able to prove exactly how that loss of reputation damages him, but you know it does damage him and the law presumes it does damage him. He is not required to give more proof than that his reputation has been injured, and then you may presume damages. But there are another kind of damages, called special damages. You may sustain a monetary loss by reason of not being able to sell your goods by reason of loss of customers and if you can prove that, the jury may take it into consideration.

The plaintiff has spent considerable time here trying to prove what he suffered by reason of not being able to sell his citrons that year. You will have to take it as a statement of law, that there are some defects in that proof, and you will not give him damages upon a finding that this prevented him from selling

*Charge*

1213

8,000 citrons which he would have sold, but for this libel. That part of the proof is not made out and if you give damages you are permitted to give damages only for the damage to his actual reputation, and you may take into consideration there, gentlemen, also the question of damages to a business man's reputation, hurting his good name and preventing him from making the usual profits which he might make otherwise. That you may take into consideration; as a matter of fact, when it comes to this kind of damages the Court of Appeals has stated that the best rule to lay before the jury is that the damages are within their sound discretion; that you cannot tell a man how to prove what he has lost by reason of loss of reputation, but a reasonable man can form a reasonable inference about it and you have to tell the jury to use their reason and to bring in a verdict for such damages, if the plaintiff is entitled to any, as will compensate him for the loss which you believe he has suffered by reason of a libel upon him.

1214

In addition to that, however, you have a right to consider whether this libel, if it be a libel, was published maliciously, that is with intent to injure this plaintiff.

I have said to you that it is not a question of a dishonest business competition, that is true up to the point where you come to damages, but if you find that this defendant has published maliciously with intent to injure this plaintiff in unfair business competition, this article, then in addition to the damages which you may believe he has suffered actually you have a right to add to it such damages as you may think are fitting for the offense of the defendant, if he has committed any offense.

1215

Mr. Miller: The defendant excepts to the last part of your Honor's charge where you say that the jury would be justified in addition to the damages that fol-



1216

*Charge*

lowed also to award what we call punitive damages. I ask your Honor to charge the jury that from the evidence in this case there has been no facts laid before them which would justify them in an imposition of any punitive damages, because there was no malice in fact proven outside of the malice which may be inferred which we call legal malice from the article.

The Court: Motion denied.

Mr. Miller: Exception.

1217

The Court: There is one point I still must call to your attention. I forgot to say to you that when considering the truth of this charge if you come to that point at all, that statements have been made on cross-examination in regard to the article supposed to have been signed by certain twenty rabbis in this city, I want to call your attention that there is no proof that such an article was published and there is no such article in evidence. It was brought out on cross-examination and no proof of it was put in and so what was in it we do not know and so forget that article, the article of twenty rabbis supposed to have been published on the 14th of September.

The jury retire.

1218

The jury return to the court later and say they find a verdict for the plaintiff for \$10,000.

Mr. Miller: I move to set aside the verdict and I ask for a new trial on the ground the verdict is contrary to law, against the weight of the evidence and on all other grounds mentioned in Section 999 of the Code of Civil Procedure and on the ground that it is excessive.

The Court: I will reserve decision upon the question of the amount and nothing else. You may have a week to submit memorandums if you desire.

Mr. Miller: I except.

The foregoing case contains all the testimony given upon the trial of this action.

**Opinion.**

1219

By Mr. Justice Lehman—The jury were well justified in finding that the publication of the article complained of was made with actual malice, and consequently could award punitive damages. These damages naturally rest within their sound discretion, but that does not mean that they may award damages which, in view of all the circumstances, a reasonable man would regard as excessive. In determining even punitive damages the jury should take into consideration the nature of the charges and the probable actual damages suffered. In the present case the jury were justified in finding that the defendant made an unfair and in some respects untrue statement in order to harm the plaintiff because he would not enter into a business contract upon the terms which the defendant demanded. The amount of the verdict is undoubtedly based upon the indignation and, I may say, passion which business men may naturally feel at such practices. At the same time the charge against the plaintiff was not a charge which most of the community would consider very serious, and even in the particular community in which it was circulated, though it may have tended to bring the plaintiff into disrepute, it could not and in fact did not hurt the plaintiff's reputation permanently or very seriously. The plaintiff tried to prove special damages to his business, but in this he failed. In my opinion the verdict of \$10,000 is, under the circumstances, excessive and should be set aside unless the plaintiff will stipulate to reduce it to \$6,000. That amount is, in my opinion, as large as a reasonable man acting without passion could have found.

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1222

**Plaintiff's Exhibit 16.**

## CEDARS.

## A Duty to Publish.

The Hebrew Publishing Company, who since former years, have not omitted a single year to supply their faithful customers with the best Palestine cedars at the cheapest prices, find it necessary to acquaint the Jewish public with the following:

1223

We have not this year received any cedars from Palestine, and with the exception of a few American cedar dealers, no one (meaning the plaintiff) received any cedars this year from Palestine.

We need not make any investigation regarding that, because everyone knows that from the countries that are at war, no cedars can be procured and just as we could not bring any Hebrew books from Russia and Austria, just so we could not bring any cedars from Palestine. And so were left all the honest cedar dealers in America, this year without cedars. Energy and financial schemes did not help and naturally when one has no cedar, one does not pronounce any blessing.

1224

We would not have found it necessary to make this explanation were it not for the abominable thing perpetrated by a few (meaning the plaintiff) cedar dealers.

Just listen and you will be astonished at what is apt to happen.

As amongst the cedar dealers in America are found a few (meaning the plaintiff) who have every year appealed to the public through announcements in the newspapers that no other cedars should be purchased, except Palestine cedars because thereby assistance is rendered toward the rebuilding of the Holy Land, and support is given to thousands of colonists who derive a living from planting cedars. Now those cedar

dealers (meaning the plaintiff) have seen that they cannot procure any cedars from Palestine, so they (meaning the plaintiff) travelled over to Korfu, Greece and bought up a big stock of Korfu cedars.

And just those cedars that come from a land where the ground is saturated with Jewish blood, and which were prohibited by all the sages of Europe, so they (meaning the plaintiff) advertise that they (meaning the plaintiff) have through untiring efforts procured a small number and that it costs them a big price.

Then ask yourself why should these unclean goods cost dear? And why it should require untiring effort to bring to America? They all know apparently, that Korfu cedars are always the cheapest in the market, because not all the cedar dealers would buy them and naturally in America, where there are less buyers, it ought to be and is cheaper and besides the two main markets, such as Russia and Austria are closed; then why should they be so dear. Also the importing should not have been so difficult because Greece is not yet involved in war. 1226

The answer is that Korfu cedars cost only a trifle, very little, perhaps ten cents a cedar, and there have been enough, brought over, to be used as preserves after the holidays. But it was agreed amongst themselves (referring to the plaintiff) that they (referring to plaintiff) should circulate a report that cedars are scarce and very high priced, in order to blind the public and that it should not inquire what kind of cedars they were, and to skin the public. We find it necessary to announce in order that the public should not be fooled and that it should not permit itself to be skinned, with Korfu cedars which are unfit for blessing. 1227

All the cedar dealers from the whole country should give this information to their customers. All Rabbis,

1228

*Plaintiff's Exhibit 17*

Cantors, Shoctim, Sextons, Presidents of Synagogues, Religious Societies, and all those interested in the religious wants of the people, should acquaint their congregations and forewarn them not to buy any cedars this year because it is much better not to pronounce a blessing on any cedar than to pronounce a blessing on Korfu cedar, which grows low to the ground and which is soaked in Jewish blood. It is a much higher duty to give the money to be paid for the cedar to the relief fund for our unfortunate Jewish brethren and sisters in the war countries that trust so strongly to our help.

1229

It is a much higher duty to give that money to Talmud Torahs and Yeshibeths in Palestine which are in danger of being closed on account of the war.

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**Plaintiff's Exhibit 17.**

(Telegram.)

Received at G R 233 Grand St. N. Y.

19 NY HM 12

1230

SPRINGFIELD MASS 1011 AM SPET 15-1915-  
MR S SALAND,

41 CANAL ST NEW YORK.

I STOPPED CHECK EIGHTY ONE DOLLARS  
ON ACCOUNT MORNING JOURNAL LETTER  
FOLLOWING

RABBI S. RAPAPORT

**Plaintiff's Exhibit 18.**

1231

(Telegram.)

RECEIVED AT EQUITABLE BUILDING  
BALTIMORE, MD. always open

B 107 C A 18 COLL

CINCINNATI O SEP 18-15

RABBI M. N WEISBLATT

1143 E BALTO ST BALTO

WILL NOT ACCEPT ESROGEM YOU SENT  
ME AS KORFFIER ESROGEM ARE PROHIBIT-  
ED ADDASSIM ARE LEAFLESS SEND 1232  
OTHERS

RABBI H HOCHBERG

854 P

**Plaintiff's Exhibit 19.**

POSTAL TELEGRAPH - - - - COMMERCIAL CABLES  
Clarence H. Mackay, President

TELEGRAM

Received at Delivery No. 565  
253 Broadway N. Y.

Phone 6700 Barclay 1233

The Postal Telegraph Cable Company (Incorporated)  
transmits and delivers this message subject to the  
terms and conditions printed on the back of this blank.

20G SA 8 1016 AM

Pittsburg Pa Sept 19, 15.

Goldberg,  
203 E. Bdway, New York

ASSURE TELEGRAPHICALLY WHETHER  
ESROGIM BOUGHT BOLOZIN ARE KAFIER-  
ERS.

S LUBITZ

1234

**Plaintiff's Exhibit 20.**

POSTAL TELEGRAPH - - - - COMMERCIAL CABLES

Clarence H. Mackay, President

Delivery No.

**TELEGRAM**Received at  
2529 Atlantic Ave

Phone 1794 East N. Y.

The Postal Telegraph Cable Company (Incorporated)  
transmits and delivers this message subject to the terms  
and conditions printed on the back of this blank.

1235

4 N Y R 5 Blyn  
Toronto Ont. Sept. 20 1915 2529 Atlantic Ave  
Phone 1794 East N Y  
S Saland

1513 St. Marks Ave.

DON'T SEND ESROGIM BECAUSE BUY CAT

RABBI ROSENBERG

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**Plaintiff's Exhibit 21.**

Seal: The Security Bank of New York

1236

No. 163 1-97

345-347 Grand Street. New York Oct 6 1915

Pay to the order of S. Saland

Eighty no/\_\_\_\_\_ Dollars

Through the New York Clearing House Association

HEBREW PUBLISHING CO.

DAVID WERBELOVOSKY,

Secy.

MEYER CHUNIZ,

Treas.

\$80.00/100

Hebrew Publishing Co.

50-2 - Eldridge St.

(Perforated): PAID.

(Endorsed): S. Saland.

**Plaintiff's Exhibit 23.**

1237

## ARTIC FREEZING COMPANY

Cold storage and freezing

Office, No. 120 West Street,  
 No. 619 New York Sep. 28, 1915

Received on Storage, in stores Nos. 119, 120 & 121  
 West Street and 85 Dey Street

For account of C. H. Widman

Incorporated

1238

....bbls. ....	Bags .....
73 Boxes Lemons	....Baskets .....
236 " " small	....Tubs .....
....Crates .....	Cans .....

Storage 15.84 per month COLD STORAGE  
 ARTIC FREEZING CO.  
 Per S.

The annual Receipt is given for the number of packages only. As we do not examine goods when received, we cannot certify as to their condition, therefore we will not be responsible for any damage to perishable goods. Stored at owner's risk.

1239

Storage charges do NOT include Insurance from loss by fire.



1240

**Exhibit 9.****Plaintiff's Exhibit 26.**

Tageblatt, Sep 8/15

**The Difficulty of Obtaining Esrogim for American Jews.**

Mr. Zundel Salant, the greatest importer of Esrogim in America, has made this year, as every year, all possible efforts to obtain Palestine Esrogim, but unfortunately he has not succeeded although the number of Esrogim secured by Mr. Salant is very small.

1241 He had great difficulties, however, before he obtained it.

The manner by which Mr. Zundel Salant has obtained the Esrogim is really interesting. The great importer has almost jeopardized his life in order to realize his ambition and, as usual to benefit the American Jews by a goodly Esrog.

As is known, Mr. Salant journeys every year to the Land of Israel (Palestine) and buys the Esrogim and brings them to America. Mr. Salant himself is a great canvasser and does not depend on anybody to buy Esrogim [for him]. He therefore travels himself to the Holy Land and sells them here in America. All Jews know it and therefore they eagerly buy his Esrogim (literally snatch up) as soon as he brings them here.

1242

Every year this is achieved very easily and there is no difficulty. This year, however, on account of the war, the situation has become difficult, and it was with the great troubles that Esrogim could be secured.

Mr. Salant departed from New York on the 18th of June for the Land of Israel (Palestine) on the Greek SS Thessalonike V. C. At Gibraltar the steamer was detained for fully six days. Thanks to the American consul the importer secured the permission to enter the city. As the officials took him to be a

German they have sent along with him detectives to watch that he should not, God forbid, deliver secret documents of the English army (lit. military) or obtain any secret plans of the region.

After six days have elapsed the Captain of the steamer obtained permission to proceed to Turkey.

Mr. Salant proceeded from Gibraltar to Alexandria, Egypt. There he thought he would be able to realize his plan of proceeding to Joppa, but no permission was given to go Joppa, nor was it possible to go thither. There was simply no way by which to reach Joppa. No one is allowed to enter Joppa at present. From Alexandria he proceeded to Piraeus, Greece. 1244

The great importer of Esrogim, Mr. Salant, could not make up his mind to return to America without Palestine Esrogim. To realize his ambition, as stated, to buy Palestine Esrogim for the Jews in America, as every year, he telegraphically ordered the Esrogim in Joppa. The orders were made at Piraeus.

Considerable time elapsed and the Esrogim from Joppa came to Mr. Salant at Piraeus through Syria. Mr. Salant intended to forward the goods on a Greek steamer. But here again great difficulties presented themselves. For in order to send it (the goods) by a Greek steamer it was necessary to have the permission of the English consul, and the consul could not give any permission without the authorization of the Greek ministry. But the Greek ministry refused to give any permission. 1245

The goods then remained in Piraeus and there he had to sell it all for the making of preserves. It is needless to say that the Esrogim importer has sustained a great loss of money.

It is self-understood that this year there are very few Esrogim in general and many Jews will remain without Esrogim this Feast of Tabernacles.

1246

*Plaintiff's Exhibit 27*

However Mr. Salant succeeded in getting citrons in neighboring countries and it was also with great difficulty and hard work that he succeeded to bring them here.

When a representative of the Tageblatt saw the Esrogim importer, Mr. Zundel Salant, and asked him about his journey, he said: "If the Jews of America knew of the great danger I experienced on my journey, they would more eagerly run for the Esrogim. I am proud, however, of what I have experienced on my journey, that the American Jews shall be able to fulfill the commandment of pronouncing the benediction on the Esrog as the greater devotion. [Adv.

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**Plaintiff's Exhibit 27.**

Wednesday Ev'g .. 5676.

Chief Rabbi S. Rappaport,  
53 Greenwood Street,  
Springfield, Mass.

1248 Peace and all, that is good, unto the honorable merchants Messrs. Soloman Salant and L. Cutler, may their light shine.

This morning I have stopped the check on account of the Jewish Morning Journal, which published a Prohibition by the Publishing Company, and also a professional (Achitofel) advice of old Rabbis not to pronounce a benediction over the citrons.

But I have searched all questions and answers on the subject, as issued by the greatest of Israel in later times, who argue the point of engrafted citrons in general and that of the Korfu citrons in particular. And I found the following to be well settled:

That in case of necessity, when no citrons of the Land of Israel can be reached from Rabbis testifying to their ritual fitness, and especially in times of war that then it is allowed to pronounce the benediction over citrons growing without the Land of Israel, although we may suspect them to be engrafted.

Yes, it is true, speaking of Korfu citrons, that the great Rabbi Israel Elchonen came out with a decided opposition and that some other authorities of later times have endorsed his views, being myself one of those that affixed their signatures to the same in Europe, as I have been initiated by the latter; yet since I heard from Mr. Cutler that he is ready to swear and to be fined if it shall be proven that the citrons are coming from Korfu, stating that they are rather citrons of Rapiza and Parga. 1250

As soon as you receive this communication, be sure to send me as ordered and to-morrow morning my daughter will go to the Bank and ask there to cash the check and you shall not fear anything. I wanted to send another check, but my daughter tells me that this check can also be honored, for she will withdraw the stoppage. The mouth that pronounces "NO" can also pronounce "YES."

I just wrote a letter to the great Rabbi M. Z. Margolies, President of the Union of Rabbis, why he hearkened unto the voice of Hypocrites for the sake of aggravating cursed politics. 1251

I also wrote to the great Rabbi Jaffe and Rabbi Leventhal and to Dr. Klein. But let me ask a small favor from you; Send me an entirely imperfect citron and I will search the inward signs of the seeds—the outward signs I had investigated by a recognized expert finding, that they have no signs of engrafting, so I will as well look into the inward signs.

1252

*Defendant's Exhibit B, Part 2*

In the meanwhile send me the order at once because upon the approach of the Day of Atonement, I have no one to accept it, my entire family being in the Synagogue on that Day.

For the Lord's sake! I am sending you a special delivery that you shall immediately ship it. I am very much worried over the myrtles becoming spoiled. They were left by you tied to the Palms in your office. I am writing to you again to send the order to me at once. My daughter will fix it that the check shall be ordered to-morrow.

1253

Of me, who blesses you with a Happy New Year.

(Signed) SAMUEL RAPPORT

The Local Rabbi

**Defendant's Exhibit B, Part 2.**

(Jewish Daily News, Sept. 24, 1914.)

ESROGIM, LULAVIM AND MYRTELS.

1254

I make known to all my patrons in the city and the country that I have already received my stock of Esrogim from Palestine, green Lulavim from Genova, and American triple myrtels at my wholesale store 133 East Broadway, New York.

All my patrons are requested to apply with their orders betimes. One who is prompt is a gainer. I wish all my patrons and all Jewish people a good Kesiva and Chesima.

S. SALAND,

133 E. Broadway, New York.

Tel. Orchard 7363.

**Defendant's Exhibit C, Part 2.**

1255

(Jewish Morning Journal, Sept. 8/15).

ESROGIM, LULOVIM, MYRTELS (Palm-  
branches)

I make known to all my patrons in the city and the country that, owing to the present conditions, I have received very few Esrogim; and the prices, of course, will be much higher; wherefore, he who desires to be sure of getting Esrogim must let us know at once, in order that he may not be left without goods, and he who will order first will be a gainer for his promptness.

1256

I wish everybody a year of redemption and salvation, and a good Kesiva and Chesima

T. GOLDBERG,  
203 E. Broadway, New York.

**Defendant's Exhibit C, Part 3.**

(Jewish Morning Journal, Sept. 8, 1915)

ESROGIM, LULAVIM (palm-branches)  
and MYRTLES Wholesale

1257

I make known to all my patrons in the City and Country that on account of the war it was impossible to import goods as in ordinary times, wherefore there are very few Esrogim this year, and he who desires to be prompt and gain and have good Esrogim should send his order betimes. My wholesale place is:

41 Canal Street, New York.

I wish all my patrons and friends a good Kesiva and Chesima

Respectfully,  
S. SALAND, 41 Canal St., N. Y.

1258

**Defendant's Exhibit D.****A VOICE FROM ZION**

Calleth unto her children with might! The voice of a sobbing bereaved mother! My sons have forsaken me, have forgotten me, and have gone away!

Brethern in distress! This terrible voice, the voice of the daughter of Jerusalem that rendeth the heart of every Jew, has been heard these many years, but only few whose ears were not hardened turned their ears to the sobbing of their mother, while to the people at large it was like a voice in the mountains; they perceived not that it was the voice of their mother and their nation.

1259

1260

Brethern in Zion! You all know that last year all the eminent men and great Rabbis of Israel the world over issued a prohibition of the use of the Esrogim of the Greek islands by any Jewish community, and this week we have received a cable message from the eminent Rabbi Isaac Elchonon from Kovno to the effect that the Esrogim known as Corfuan are forbidden for use, and we have heard and have seen, to our great regret, that last year many of the dealers in Esrogim have perverted the Law by buying Corfuan Esrogim under another name thus misleading the Jewish people, who purchased the cursed Esrogim under a changed name, and the dealers led them astray by having them observe the commandment through a violation, wherefore I must arouse all the righteous and God-fearing that they shall not turn this time to falsehood, nor turn their ears to them that lead them astray with flattering speech. This is the advice: That they shall not take any Esrog, if they are not sure that it is the product of the Holy Land, the Land of our fathers; we shall thus be free from any doubt whatsoever, and shall perform the commandment of our Holy Law saying "And ye shall take unto yourselves"

*Defendant's Exhibit D*

1261

of your own (of your land, the land of your fathers). And besides, by this we are giving aid to our dear brethern, the ploughmen who are tilling the ground on the mountains of Judah. I (we) warn herewith all dealers in Esrogim to be careful not to buy any Esrogim but those of the Holy Land, and let them not risk their money. He who is willing to hear shall hear, we have saved our soul (have done our duty). He who walketh in his integrity shall walk in security. The reward of a good deed is the good deed itself, his reward is double from Him who dwelleth in Zion.

(Signed:) JACOB JOSEPH, Chief Rabbi.

1262

HILLEL K.-Z. surnamed Dr. Klein.

DR. DRACHMAN, Rabbi Cong.  
Zichron Ephraim.

MOSES COHEN RAPPAPORT,  
Rabbi Cong. Dukler Mogen Abraham.

1263



# **Defendant's Exhibits E, R, L, R, Part 6.**

Brooklyn N Y October 15 1914

HEBREW PUBLISHING CO.

To S. SALAND

1513 St Marks Av

1,159.20	1,243.50	829	Citrons Palestine (Found only 828)	1.50	1△
58.50	58.50	150	Palms green	.39	3
131.25	131.25	75	Citrons Palestine	1.75	
25.00	26.00	26	" (found only 25)	1.00	
25.00	25.00	25	"	1.00	
50	75.00	100	Palms	75	5
40	40.00	40	Citrons Triest	1 00	
<hr/>	<hr/>				
1,488.95	1,599.25		Allowance on 75 citrons and on 25 Palms		
16					
<hr/>					
1,472.95			Profit on Myrtles		
72.52					
<hr/>					
1,545.47			510 Cash		
854			344 Myrtles		
<hr/>			<hr/>		
691.47			Allowance on Myrtles		
18.47					
<hr/>					
673.00					

OK CH

Received Payment  
S SALAND

**Defendant's Exhibit F, Part 2.**

1267

(Warheit, Sept. 14, 1915.)

**THE ESROGIM TRUST IN AMERICA.**

We are to be congratulated upon an Esrogim Trust.

This is no joke, but a sad earnest with the hundreds of thousands of Orthodox Jews in America. Still harder this news has hit the Rabbis who consider it their duty to provide their communities with Esrogim.

And this is not all. If the new Esrogim Trust had for sale Palestine Esrogim, the trouble would not be so great. For years a propaganda has been carried on for Palestine Esrogim and against those of Corfu, Greece, where anti-Jewish riots often occurred. Thanks to the labors of the Zionists and other earnest Jews a large part of the public were made to understand that the observance of the commandment concerning the Esrog may be considered proper only when the Esrog comes from the Land of Israel (Palestine).

1268

It is written (in the Torah): "And ye shall take you on the first day the fruit of goodly trees." The Midrash and the Talmud interpret the word "you" as meaning "of your," that is of your own land. For, indeed, what sense is there for a Jew to rejoice with an Esrog from a foreign land, which has no Jewish tradition except, alas, the shedding there of Jewish blood?

1269

The ceremony of the benediction on the Esrog is only one of the beautiful national symbols to show what beautiful fruits the land of the Jews produced. Now, what reason is there for us to rejoice that Greece produces fine fruits? California has finer fruits and so far there were no anti-Jewish riots there.

But there are the ultra-orthodox who wish to forget the meaning and origin of this rite and are inter-

ested only in the literal observance of the mechanical part of the ceremony.

This year, as known, no Esrogim were obtainable in Palestine on account of the war. Some Jew connected with a Rabbinic family went to Palestine, but not finding any Esrogim there he went and bought off as many Corfuan Esrogim as he was able to obtain and thus came into existence the Trust of Esrogim grown outside of Palestine.

1271 About this time usually come orders for Esrogim from retailers as well as from Rabbis who procure Esrogim for the members of their communities, incidentally deriving therefrom a small income. When the retailers and the Rabbis began to inquire about Esrogim, they were dumbfounded. As high as five dollars a piece is asked for a Corfuan Esrog.

Of course, it is almost impossible to pay such price, for when a Rabbi himself pays for an Esrog five dollars, he must get for it a dollar or two more, but who can pay now-a-days so much for a Corfuan Esrog? In short, there is terror now in the world of Esrogim.

1272 A few of the well-known booksellers who usually provide the country and other(?) places with Esrogim have openly stated that this year they will not sell any Esrogim. One well-known firm has sent out letters to its patrons advising them to contribute the few dollars they are spending for an Esrog to the Relief Fund for the unfortunate victims of the war. These booksellers are not willing to handle any Esrogim which are not from Palestine, even though there be no trust, and especially when they are bent on extorting such high prices.

It is rumored that this year many Rabbis will permit their communities to get along without Esrogim and use the money for charity.

In the meantime there is hubbub in the Esrogim market.

**Defendant's Exhibit H, Part 2.**

1273

(Jewish Morning Journal, Sept. 8th, 1915.)

**ENGLAND STOPS A SHIP WITH PALESTINE  
ESROGIM.**

Confiscates more than 12,000 Esrogim destined for America.—No difference, says an English Officer in Gibraltar, Esrogim or Bombs, Turkey is our Enemy, and everything which comes from there is contraband.

oOo

The well-known importer of Esrogim, Mr. Zundel Salant, has just returned from perilous journey to Palestine, and instead of bringing many Esrogim, as he does every year, he has now brought a whole pack of troubles and tales of adventurous travels which he will remember for many years, and the Esrogim which he carried with him were confiscated by the English Government. By miracle he succeeded in bringing some Esrogim that will not suffice to supply even ten per cent of the usual demand of Esrogim he has every year.

1274

Mr. Salant left New York the 19th of June on the Steamer *Saloniki*. With him there were on the Steamer several Red Cross physicians and six American citizens.

1275

When they arrived in Gibraltar several English Officers detained the ship and after great efforts and the intervention of the American consul, the passengers were released and were permitted to proceed to Alexandria, Egypt.

When Mr. Salant arrived in Alexandria and desired to proceed to Joppa, he found out, to his sorrow, that it is impossible not only to go to Joppa, but even to send there telegrams or letters, all communications being cut off, and it has taken considerable

1276

*Defendant's Exhibit I*

time and effort before Mr. Salant has succeeded in getting together Esrogim, but on the journey the English Government declared the Esrogim as Turkish contraband and has seized them and turned them over to the English Army to make of them preserve for the soldiers.

All appeals were in vain. Mr. Salant had to leave without Esrogim, and only in Piracus he secured some Esrogim, which he brought to America with great difficulty.

1277 As Mr. Salant stated to the reporters the American Jews will experience a great scarcity of Esrogim this year, because he obtained only a small lot and at high prices.

He says they (the dealers) will be glad if they will be able to fill at least some of the orders, and he who will come first will have the privilege—he will somehow manage to get Esrogim, and for all this we have to thank this bloody war which destroys the whole world.

---

**Defendant's Exhibit I.**

1278

No Palestine Esrogim this year in America (except a small number, without Lulavim, received by some individuals by mail).

Benediction on Corfuan Esrogim prohibited.

Such is the decision issued by 20 Rabbis, members of the Union of Rabbis, on the 15th of September, 1915.

Sign

**Defendant's Exhibit J, Part 2.**

1279

(Post Card.)

Hebrew Publishing Co.,  
50-52 Eldridge St.

New York, Sept. 7, 1915.

Dear Sir:

We have just received advices saying that the Eretz Israel (Palestine) Esrogim which were shipped to us were detained on the way on account of the war, and there is no hope that we should get them in time. We regret to have to inform you about this, and we beg you will not rely on us this year with your order for Esrogim.

1280

With best wishes for the New Year

Respectfully

THE HEB. PUB. CO.

**Order Settling and Filing Case.**

It is hereby ordered that the foregoing case and exceptions, which contains all the evidence introduced on the trial of this action, be and the same is hereby settled as the case and exceptions herein, and the foregoing printed copy is hereby directed to be filed in the office of the Clerk of this court in lieu of the engrossed copy required by the rules.

1281

Dated, October 22, 1917.

IRVING LEHMAN,

J. S. C.

We hereby consent to the entry of the foregoing order.

MILLER & STEIN,

Attorneys for Defendant-Appellant.

HERMAN S. FROST, *Ad. J.*

Attorney for Plaintiff-Respondent.

**1282 Stipulation Waiving Certification.**

Pursuant to Section 3301 of the Code of Civil Procedure it is hereby stipulated that the foregoing are true copies of the notice of appeal, judgment roll, case and exceptions, and the order denying motion for a new trial in this action, on file in the office of the Clerk of New York County, and certification thereof by said Clerk is hereby waived.

Dated, October. *18*, 1917.

MILLER & STEIN,

Attorneys for Defendant-Appellant.

HERMAN S. ~~FROST~~, *Fried*

**1283**

Attorney for Plaintiff-Respondent.

**Clerk's Certificate.**

County of New York, }  
State of New York, } ss:

**1284**

I, William F. Schneider, Clerk of the County of New York, and Clerk of the Supreme Court of the said State for the said County, do hereby certify that I have compared the foregoing with the original copies, the notice of appeal, judgment roll, case and exceptions, and order denying motion for a new trial, on file in my office, and that the same are correct transcripts thereof and of the whole of such originals.

In Witness Whereof, I have hereto subscribed my name and affixed my official seal, this       day of October, 1917.

WILLIAM F. SCHNEIDER,  
(Seal)

Clerk.

Order Filing Record in Appellate Division

It is hereby ordered that the foregoing records  
filing in the office of the Clerk of the Appellate Division  
of the Supreme Court of the First Judicial Department

Dated, N.Y. October, 25, 1917.

Living Lehman.





*To be argued by*  
*Morgan J. O'Brien.*

## **New York Supreme Court,**

APPELLATE DIVISION—FIRST DEPARTMENT.

SUNDEL SALAND,  
Plaintiff-Respondent,

against

HEBREW PUBLISHING COMPANY,  
Defendant-Appellant.

### **APPELLANT'S BRIEF.**

This is an appeal by the Hebrew Publishing Company from a judgment of this Court entered in favor of the plaintiff for \$6,256.06. The action is for libel. The case was tried before Mr. Justice Lehman and a jury. The jury gave the plaintiff a verdict and fixed his damages at \$10,000. The defendant moved to set aside the verdict and for a new trial, on the ground that the same was against the weight of the evidence and contrary to law, that the damages were excessive, and upon all the grounds stated in Section 999 of the Code of Civil Procedure. Mr. Justice Lehman denied this motion, except that he reduced the damages from \$10,000

to \$6,000. The plaintiff consented to such reduction. The exceptions upon which the appellant relies are found at folios 69, 1172 and 1218 of the Record.

### **Statement of Facts.**

The complaint alleges in substance, as follows:

1. That the plaintiff, for many years, has been engaged throughout the United States in the business of marketing, buying, selling and dealing in what is known among the Jews as esrogim, and what Christians would describe as citrons (erroneously translated in the complaint—"cedars").

2. That the defendant was engaged in the publishing business and was also engaged in dealing in the same articles as the plaintiff.

3. That during the year 1915, and particularly at the time when the libelous articles hereinafter mentioned were published, there were only a very few persons, including the plaintiff, dealing in such goods in the United States.

4. That these goods were used extensively by the Jewish public in connection with the celebration of the Feast of Succoth (Tabernacles), in synagogues and homes, and that in order to be able to deal successfully in such goods, it was necessary for the plaintiff to have the respect and confidence of the Jewish public; that the plaintiff enjoyed the confidence and esteem of the Jewish public, and was regarded by all as a reputable business man of good name, fame and credit, and had acquired and was continually acquiring large gains and profits from his said business.

5. That the defendant, in order to injure the plaintiff in his good name, fame and reputation, and in order to injure him in his business, to pre-

vent divers persons of Jewish faith from purchasing the goods in question from the plaintiff, and to deprive him of the gains and profits therefrom, in the month of September, 1915, falsely, wrongfully and maliciously caused to be published of and concerning the plaintiff, in the Yiddish language in various Jewish newspapers, the alleged libel annexed to the complaint, marked Plaintiff's Exhibit "A."

6. That such exhibit is a true and correct translation in English of said article.

7. That the meaning of said article and the charges that the defendant sought to make and did make against the defendant are that the plaintiff, in collusion with a small number of other citron dealers, was misleading the Jewish public and inducing them to buy Korfu citrons which were of no value whatsoever, unclean, repulsive to the Jewish instinct and prohibited by the Rabbis, *by falsely representing that they were Palestine citrons* and that *thereby the plaintiff was attempting to cheat and skin the Jewish public.*

8. That the newspapers in question have a large circulation and are read by a great portion of the Jewish public, who "understood and knew that the articles applied and referred to the plaintiff."

9. That the facts stated in the articles were false and untrue and that defendant knew them to be false and untrue at the time it caused the same to be published.

10. That by reason of the wrongful acts of the defendant, the plaintiff has been greatly injured in his good name, fame and reputation, and has been brought into disrepute throughout the United States, and that by reason thereof a large number of plaintiff's customers cancelled their orders and

refused to pay for citrons purchased, and the plaintiff was left with a large stock of citrons which he was unable to sell and dispose of, all to his damage in the sum of \$50,000.

The answer first served by the defendant contained no justification, being confined to denials of allegations contained in the complaint. The action came on for trial before Mr. Justice Donnelly. Defendant moved to dismiss the complaint, on the ground that it did not state facts sufficient to constitute a cause of action. Mr. Justice Donnelly denied the motion to dismiss, but permitted the withdrawal of a juror so that the defendant might serve an amended answer alleging justification. After this was done, the case came on for trial before Mr. Justice Lehman.

The record, at pages 22 and 23, contains a colloquy between Mr. Justice Lehman and the attorneys, which makes it clear that the complaint would have been dismissed if it had not been for the previous decision of Mr. Justice Donnelly:

**"Mr. Miller:** I move to dismiss the complaint on the ground it does not set forth a cause of action.

**The Court:** I will grant the motion. The only charge in this article is that they agreed among themselves to circulate a report which I will take to be untrue, that citrons are scarce and very high priced in order to blind the public and to skin the public. That is a mere conclusion, not following and in itself creating a libel *per se*. Complaint dismissed.

**Mr. Fried:** Your Honor holds—

**The Court:** That your innuendo is not supported by the article.

**Mr. Fried:** From the reading of the whole article it shows that the public all thought we were trying to mislead them by selling Palestine citrons. I ask to withdraw a juror for the purpose of amending the complaint.

**The Court:** Motion denied. Did Judge Donnelly deny the motion?

Mr. Fried: Yes.

Mr. Miller: I move to dismiss the complaint.

The Court: Motion denied.

Mr. Miller: Exception."

Such other facts as seem to us material on this appeal will be hereinafter stated.

### POINT I.

Mr. Justice Lehman should have granted the defendant's motion to dismiss the complaint at the opening of the trial, and its motion to dismiss the complaint at the end of the trial, and the exceptions found at folios 69 and 1171 are good.

The opening address of the plaintiff's counsel, Mr. Fried, is found at pages 24 to 31, inclusive, of the record. If the Court will read this address in connection with the allegations in the complaint, it will understand precisely what was in the plaintiff's mind at the time this action was brought.

So far as concerns the plaintiff's character, as distinguished from his goods, the plaintiff made only one complaint, namely, that "the whole article read together from the beginning to the end shows that he attempted to foist on us the false representations that we were selling Korfu goods and representing them to be Palestine goods" (fol. 89). But the plaintiff thought that his goods had been libelled by the defendant and he sought to prove special damage.

On the question of malice, plaintiff relies upon his interviews with Mr. Werbelowsky, the defendant's secretary and treasurer, referred to in the opening address, at folios 71 to 75, inclusive. The plaintiff, in effect, claims that the articles in ques-

tion were published by the defendant for the purpose of punishing him for his refusal to make some business arrangement with the defendant similar to arrangements which previously existed between them, under which the defendant might participate in the profits resulting from the sale of the goods purchased by the plaintiff in Greece in the Spring of 1915.

We will now ask the Court to follow us carefully while we attempt to make a critical analysis of the alleged libel and the Judge's charge, with the intention of narrowing the discussion to the precise question upon the determination of which the present appeal depends.

*A. The only innuendo contained in the complaint, being the innuendo printed therein as paragraph VII, has been obliterated from the case by the Judge's charge.*

Although Mr. Justice Lehman was sufficiently influenced by the decision of Mr. Justice Donnelly to retreat from the position which he took originally with reference to the defendant's motion to dismiss the complaint at the opening of the trial, he never receded from the position that the alleged libel did not support the innuendo. On this point, he charged the jury, as follows:

"The plaintiff has said in his complaint that the meaning of the aforesaid article and the charges that the defendant sought to make and did make against the plaintiff are that the plaintiff in collusion with a small number of other citron dealers was misleading the Jewish public and inducing them to buy Korfu citrons, which were of no value whatsoever, unclean, repulsive to the Jewish instinct and prohibited by the Rabbis, by falsely representing they were Palestine citrons, and that thereby the plaintiff was attempting to cheat and skin the Jewish public.

"Gentlemen, if you think that that article is to be reasonably interpreted in that way, I need not tell you that would constitute a libel on the plaintiff.

"I will say at the outset now, that there is nothing in this article, and I state it as a matter of law, that will enable you to interpret it as charging him with the actual false misrepresentations of his goods as Palestine goods. There is nothing in this article that so charges" (fols. 1189-90).

Of course, if the article supported the innuendo printed as paragraph VII of the Complaint, we should not be here contending that it was not libellous *per se*, but with the elimination by Mr. Justice Lehman of the innuendo, the position of plaintiff's counsel in his attempt to affirm this judgment, becomes to say the least, very difficult.

If this case had been tried prior to the decision of the Court of Appeals in *Morrison vs. Smith*, decided February 9, 1904, 177 N. Y., 366, it would have been the plain duty of Mr. Justice Lehman to have dismissed the complaint as soon as the Court decided that the only innuendo contained in the complaint was not supported by the article.

We quote from the opinion of the Court of Appeals in the *Morrison* case, as follows:

"The Appellate Division affirmed the judgment of dismissal; the prevailing opinion in that court holding, in substance, that, while inclined to view the advertisement and portrait as libelous *per se* or, at least, as presenting a question for the jury in that respect, the court was to determine, only, whether the plaintiff was right in the construction set out in her complaint. It was held that she had tendered an issue, as to whether the words used were 'susceptible *per se* of the interpretation that they charge her with unchastity' and that she had failed 'to sustain the burden thus placed upon her.'



"The question is a clean cut one, which we must determine, and it is whether, because the plaintiff has, by innuendo, put a meaning upon the language, she is bound by it and, however libellous the language standing alone, she must fail in her action, if that meaning is not supported by the language or by proof. I am not inclined to concur in so restricted a view of the plaintiff's position, and I am not aware of any decision of this court compelling it. It appears to have support in some decisions of the Appellate Division and, hence, the question is made serious, if we shall determine it the other way. But I think if we regard some general rules which are now established in this class of cases, and if we follow that instinctive justice, to which common sense impels our judgment, that we will find neither rule nor principle opposing a contrary view to that adopted by the majority of the learned justices of the Appellate Division. \* \* \*

"It is said, however, that the purpose of an innuendo in a pleading being to show the true meaning of published words, every other meaning is to be rejected and that, however, libelous the words standing alone, still no cause of action is stated, if the meaning assigned is not supported. (Citing, *Brown vs. Tribune Association*, 74 App. Div., 359; *Morse vs. Press Pub. Co.*, 49 *ib.*, 375.) But what good reason is to be adduced for this rule? Is it that the defendant will be prejudiced, if he is called upon to defend against the ordinary meaning of the language, when the meaning assigned by innuendo fails? I think the answer made to this in the dissenting opinion below is a good one. It is there said that, with the innuendo eliminated by the rulings of the court, or the finding of the jury, the defendant is in no worse position than if the innuendo was not in the complaint and the plaintiff should be permitted to recover for a libel clearly appearing on the face of the article, for which no innuendo was necessary."

B. *The judgment in this case cannot be affirmed on the ground that the plaintiff proved a libel against his goods.*

Libel of a thing is not actionable without proof of special damage, and Mr. Justice Lehman instructed the jury that the plaintiff had failed to lay a proper foundation for the claim that he was entitled to recover special damage. We quote from the charge at folio 1212 of the record, as follows:

"The plaintiff has spent considerable time here trying to prove what he suffered by reason of not being able to sell his citrons that year. You will have to take it as a statement of law, that there are some defects in that proof, and you will not give him damages upon a finding that this prevented him from selling 8,000 citrons which he would have sold, but for this libel. That part of the proof is not made out and if you give damages you are permitted to give damages only for the damage to his actual reputation, and you may take into consideration there, gentlemen, also the question of damages to a business man's reputation, hurting his good name and prevent him from making the usual profits which he might make otherwise."

On the point we are now discussing the law is so well settled that it will be necessary to refer only to a single authority. We quote from the opinion of the Court of Appeals in the leading case of *Marlin Fire Arms Co. vs. Shields*, 171 N. Y., 390, as follows:

"Now, it has been the law of this state since the decision in *Tobias vs. Harland* (4 Wend., 537), in which the opinion was written by Judge Marcy, that 'when the words are spoken, not of the trader or manufacturer, but of the quality of the article he makes or deals in, to render them actionable *per se*, they must import that the plaintiff is guilty of deceit or

malpractice in making or vending them. Where the libel or slander is of a manufactured article and does not directly impeach the integrity, knowledge, skill, diligence or credit of the plaintiff, the words are not actionable at law unless special damage be alleged and proved, and a 'general allegation of loss of customers is not sufficient to enable the plaintiff to show a particular injury.'

"Among the more recent cases in which the doctrine of *Tobias vs. Harland* has been recognized and followed, are:

"*Le Massena vs. Storm* (62 App. Div., 150), in which the court said: 'When the slander is of a property right or title or of a thing, falsity of utterance, malice and special damage flowing or resulting necessarily or naturally as the proximate consequence must be alleged and shown by the plaintiff, except in those cases where the slanderous words also impute to the owner dishonesty, fraud, deception or other misconduct in his trade or business in connection with the property.'

"*Kennedy vs. Press Pub. Co.* (41 Hun, 422), in which the court said: 'It is settled by authority that a libel on a thing is not actionable unless the owner of the thing alleges and proves that he has sustained pecuniary loss as a necessary consequence of the publication.'

"*Dooling vs. Budget Pub. Co.* (144 Mass., 258), in which the court said: 'Words relating merely to the quality of the articles made, produced, furnished or sold by a person though false and malicious, are not actionable without special damage.'

We need not stop to consider the reason for the rule for it has been too long and too firmly established to admit of questioning at this day."

*C. In considering the question whether the article is libelous per se, or not, the Court must disregard the publisher's criticism of the plaintiff's prices.*

Mr. Justice Lehman charged the jury as follows:

"Does that article use terms that show an actual attempt to mislead the public, not by asking high prices, because a merchant, whether you like it or not, is entitled to get all the money he can for his goods, and while perhaps you may think that it ought to be a libel, it is not a libel to say of any merchant that he was asking prices that were not justified by the expense" (fol. 1204).

*D. In considering the question whether the article is libelous per se, or not, the Court must disregard the accusation that the plaintiff made a combination with other dealers to restrict competition.*

It is not necessary to discuss the question whether a charge that a man has violated the Sherman Anti-Trust Law is libelous *per se*, or not; because the plaintiff admits that he entered into an arrangement with Mr. Cutler, the only other important dealer in citrons in this market, which is a complete justification of the charge alleged to be contained in the article, that he had made a combination to restrict competition in the citron business. We quote from the record as follows:

"Q. During that time, were there any other American merchants in Greece? A. Yes.

Q. Who was that? A. Mr. Cutler.

Q. You were acquainted with every dealer in America? A. Every dealer in the United States that deals with citrons, yes.

Q. Were you and Cutler the only ones in 1915 that imported citrons to this country? A. Yes.

Q. You and Mr. Cutler were the only ones out there in Piraeus? A. Yes.

Q. Was there any one else in this country importing citrons? A. In this country?

Q. During the year 1915. A. Only one Greek had ten cases" (fols. 202-4).

\* \* \* \* \*

"Q. You (meaning Louis Cutler) had been in partnership with Mr. Saland in the year 1915, in the business of selling citrons and lula-vim, in question in this trial? A. Only as far as that I had five thousand citrons which he was supposed to sell at any time he would make a sale of 100, twenty-five would be sold of mine.

Q. You were to share in the profits and losses of this enterprise? A. Only up to that far; after he sells his 20,000 that I would receive the money for my five thousand from every hundred that he would sell, twenty-five would be sold of mine" (fols. 756-7).

*E. The defendant's motives are immaterial, except as affecting the measure of damages. An article which, published without a bad motive, would not be libelous per se, cannot change its character because of the publisher's malice.*

*F. This is an action for libel, not an action to punish the defendant for bad trade practice.*

No one can read the judge's charge without realizing how thoroughly he appreciated the danger that the jury would not accept the law laid down by him for its guidance, but would decide this case against the defendant because it disapproved of the defendant's motives and business conduct, and felt that the defendant should make good to the plaintiff the difference between what he actually got for his citrons imported in the year 1915 and what he would have got if he had been able to sell them all; and the event proved that Mr. Justice Lehman's apprehension on this subject was fully justified.

We quote from the record as follows:

"On the other hand, gentlemen, this is not a case of unfair competition or anything of that kind. It is a case of libel." \* \* \* "You may think it is not fair for one dealer to run down the articles which another dealer is handling,

which he is not handling. You may think that because this defendant went out of the market for Palestine citrons that it was not his duty or his place to tell the public not to buy Korfu citrons, but that is not the question here. A man has a perfect right so far as concerns this action, leaving aside all questions of morals or all questions of other remedies, a man has a right to say to the public the goods which my competitor is handling are not goods which you are going to find useful for such and such reasons, and if those reasons are good or if they appeal to the public and are true, that is the public's business" (fol. 1191).

*G. The use of the word "Korfu" instead of the word "Greek" in the article is of no importance, because the record makes it perfectly clear that the Jewish public understood the former word to be the equivalent of the latter. In other words, from a religious standpoint, there is no difference between citrons grown in one place or another, so long as they are not grown in Palestine.*

The plaintiff, on cross-examination, testified as follows:

"Q. Did you ever buy Korfu citrons? A. No; about twenty-four years ago, yes, I bought; but the last twenty years I did not.

Q. Do you know the reason why you did not buy any more? A. It is not any in existence in Korfu any more.

Q. Is that the reason? A. Yes.

Q. That is the sole reason you did not buy any for the last twenty years—because they do not produce them any more? A. They do not produce them any more.

Q. Is that the reason? A. I do not need any other reason" (fol. 256, *et seq.*).

Samuel Buchler, a Rabbi, one of the plaintiff's witnesses, testified as follows:

"Q. You said where you could not get any Palestine citrons you used Korfu citrons?  
A. Yes.

Q. Are you using the word Korfu just the same as the word Greece? A. I used it as coming from the Island of Korfu.

Q. Do you know of any other citrons than Palestine citrons and Korfu citrons? A. We mostly have bought citrons coming either from Palestine or from Korfu. I am not a dealer.

Q. You are making a distinction between Palestine citrons and other citrons? A. Yes.

Q. When you speak of Korfu citrons, you are referring to all other citrons? A. I was referring to citrons outside of Palestine, a collective expression for other citrons.

Q. Is that in general use, doctor? A. General use, yes.

Q. Korfu citrons is a general term understood to apply to all? A. To all that come outside of the territory of Palestine" (fol. 558, *et seq.*).

H. *Condemnatory language, even if intemperate, cannot make an article libelous per se if it is apparent from the whole article that the publisher uses the condemnatory language only in connection with definite statements of fact which are not in themselves libelous per se.*

Whether the Yiddish word contained in the article is the word "nevola" or the word "nevala," and whether this word is more properly translated into English as an "abominable thing" or as "degradation or disgrace, something foul," and whether the Yiddish word translated as "skinning" is or is not limited to the charge made against the plaintiff that he was trying to get more out of the public for his citrons than they were fairly worth, we must admit that the defendant might easily have made every point of consequence against the plaintiff which was made in the article by limiting itself to the use of dignified and temperate language. But adjectives or other terms of characterization are of no consequence where the facts charged are speci-

fically stated and are not libelous *per se*. The article makes no charge against the plaintiff's character or against his general reputation as a man or as a merchant. It calls attention to the fact that the plaintiff's 1915 citrons were not grown in Palestine and expresses the opinion that they were ritually unclean and were therefore worthless for religious uses. If, therefore, the publication of that charge would not have been libelous *per se* if the intemperate language had been omitted, the use of such language would not make the article libelous *per se*. The reason for this rule is obvious. Either there is logical justification for the intemperate language in the facts stated, or there is not. If there is not, the entire legal sting is taken out of the article by the recital of these facts. A few illustrations will suffice to explain our position:

A doctor has as a patient a woman who is about to become a mother. The condition of the patient becomes so critical owing to acute Bright's Disease, that the doctor is compelled to destroy the foetus in order to save his patient's life. He does so. Someone acquainted with the facts who has peculiar notions about the sanctity of human life and who thinks that a doctor under no circumstances is justified in depriving the unborn child of its chance for life however grave the situation may be, charges the doctor with being a murderer and an abortionist, but in the same publication correctly states the facts upon which the charge is based. Would such a publication be libelous *per se*?

Again, a rabid prohibitionist writes, "A is spending his time corrupting his children and the children of his neighbors, destroying their morals and educating them to be thieves. I say this, because he drinks claret at dinner, smokes cigarettes, plays on musical instruments, dances the tango, and plays bridge-whist for customary stakes." Would such an article be libelous *per se*?



A rabid socialist writes in the "Masses": "The time has arrived when the skinning of the public and the throwing of dust into the public's eyes by the plutocrats occupying Millionaires Row, on Fifth Avenue opposite to the Park, must cease. We make no charge that these men have violated the laws of the land in the accumulation of their great wealth, but we charge them as offenders against a higher law, namely, the law of humanity, and we insist that they now show decent respect for the rights of others by reducing prices and cheapening the cost of living. The cruel and remorseless law of the struggle for existence and the survival of the fittest must go." Would such an article be libelous *per se*?

Proceeding by elimination, we have now reached the crux of the case. The article charges the plaintiff (1) with advertising and offering for sale citrons not grown in Palestine; and (2) with advertising and offering for sale citrons which in the opinion of the publisher were ritually unclean, and therefore worthless for religious uses. As the record contains some testimony in the plaintiff's favor on the disputed question of Rabbinical law, we must admit for the purpose of the present discussion that the second charge made against the plaintiff is unwarranted.

In the last analysis, therefore, the plaintiff, in order to sustain this judgment, must satisfy the Court that an article charging a Jewish merchant with advertising and offering for sale Greek citrons, accompanied by an expression of the writer's mistaken opinion that such citrons are ritually unclean and, therefore, worthless for religious purposes, is libelous *per se*. It seems clear to us that this question must be answered in the negative. Mr. Justice Lehman was in a difficult position. If it had not been for the decision of Mr. Justice Donnelly refusing to dismiss the complaint, he would have

taken this case away from the jury. An examination of the charge on the question of the Rabbinical law and ritual uncleanness explains the comment of the learned Trial Judge, speaking about these matters, at folio 1211: "That is rather complicated, I am afraid, gentlemen."

We quote from the charge, as follows:

"Gentlemen, would the Jewish public naturally look upon a man who was bringing over citrons from Korfu which were prohibited or ritually unclean as a moral wrong?"

"That, gentlemen, depends entirely, I will charge you, as a matter of law upon the meaning which would naturally be put upon the word 'prohibited' or 'ritually unclean.' What I mean by that is just this, gentlemen. In the Bible which is followed by the Jews, particularly the orthodox Jews, the command appears that 'on the 15th day of the Seventh month, when ye have gathered in the fruits of the land, ye shall keep the Feast of the seven days, and on the first day shall be a solemn fast and on the eighth day shall be a solemn fast and ye shall take you the first day the fruit of goodly trees, branches of palm trees and boughs of thick trees and willows of the brook and ye shall rejoice before the Lord your God seven days.'

"The Jews in order to follow out that command take the citron which has been interpreted as the fruit of the goodly tree, the branches of the palm tree, the boughs of the thick tree, which have been interpreted by the Talmud to mean the myrtle, and the willows of the brook, and they bring them into the synagogue and they pronounce there a benediction upon those articles.

"The Jews who go to their dealers naturally expect to get from those dealers citrons which will be proper for use according to their own law. It would be an absolute moral wrong and I would so charge you, if instead of being supplied with citrons they were supplied with lemons because that is well understood, that it

must be a citron, but the question is how far, when the word prohibited is used or the words ritually unclean is used in this article, it means goods which some Rabbis would forbid or whether it means goods which no decent Jew of the orthodox kind would ever use in a synagogue.

"In other words gentlemen is there an element there of deceit, is he charged with selling religious goods which were irreligious. If he is, that in itself would be sufficient to constitute libel. *If he is not, the mere fact of his being charged with selling Korfu citrons prohibited by the Rabbis would not in itself and standing alone make out a libel.* In that regard, gentlemen, you also have to consider what would the Jewish public naturally understand by the word 'ritually unclean' or 'prohibited.'

"It has been testified to here and I think there is no question about its truth, all the experts agree on it, that the actual rules which all the Orthodox Jews follow have been authoritatively stated several hundred years ago. The Bible contains them first, the Talmud gives its interpretation of the rule of the Bible and the Code of Laws called the Schulehan Brach compiles every other command which has come into existence a few centuries ago.

"It is hard enough for them to follow those particular rules as given in those books, but still questions do come up as to further interpretation of those rules and *there is no power in the Jewish religion which has authority to pass upon those particular new points which have come up in the last few hundred years.* There may be a weight of authority that says that it is wrong to do certain things and then most people would follow them. Individuals, however, depart from that.

"Gentlemen, you have to bear that in mind when you consider the meaning of the word 'prohibited'—that the Jewish people would naturally know that there was no power which

could actually and thoroughly prohibit a Korfu citron from use within the last twenty-five years except as the community would follow the authority of those men who made the prohibition, whom they consider reliable. Gentlemen, if you find that those words taken alone would be innocent, then you must still read them however with the whole article.

"Now, the first point as to whether they were ritually unclean, you have Doctor Drochman's statement and Dr. Klein's statement.

"On the other hand you have Dr. Buchler and Dr. Margolies' statement. All of them as far as I can see agree this far, that there is an element of the Jewish public that wishes to have Palestine citrons. They all agree that certain rabbis in 1891 or 1892 or 1893 issued a prohibition against the use of Korfu or Greece citrons, partly because of the troubles in Korfu, partly in order to help along the Jewish colonies in Palestine. In one case it would be a boycott for reasons against the people who grew them; in the other case, it would be a boycott in favor of another section. They have, however, also contributed there, gentlemen, one religious question, and that is—the Bible as I have read to you says, 'the fruit of the goodly tree.' The goodly tree according to the Talmud is the citron. It is not a lemon tree. Consequently although a citron can be grown on a lemon tree by grafting it, it would not constitute the fruit of the goodly tree, and therefore, according to the strict words of the Bible, would be an improper thing to use at that Festival. Accordingly, Dr. Drochman says the reason for this prohibition was also that the Greeks not being Jews would be less careful to not graft the citron upon a lemon tree than a Jew who would grow the citron for the purpose of the ritual. Therefore, it was better to obtain the citrons from a Jewish land than from a land where Gentiles were raising the citrons.

"You will notice if the prohibition is founded on one ground, that is that it was to

help along the Palestine Colony, then when you cannot get any fruit from Palestine the prohibition would have no more reason. On the other hand, if it were based on the article itself, the prohibition would still continue. Hence, this difference of opinion as to whether there is a prohibition or not."

Unfortunately, there is no way of ascertaining precisely what illumination the jury was able to extract from the passages above quoted from the charge. To tell an average jury, or even a jury made up entirely of Jews, that they must decide a question of Rabbinical law *which no authority in the world is authorized to decide*, and about which serious differences of opinion exist among Jews, is to call upon them to perform a function which our jury system never contemplated, and which a jury is plainly unfit to perform. If, for the purposes of this case, it is necessary to determine the question of Rabbinical law discussed by Mr. Justice Lehman (which proposition we deny, because, at the best, it is mere matter of opinion), he should have decided the question himself, and upon his failure to do so this Court should make the decision without being in any way influenced by the verdict of the jury. We contend, with confidence, that the Judge's charge is open to serious criticism on the ground of inconsistency. Take, for example, the language used at the top of page 401: "In other words, gentlemen, is there an element there of deceit, is he charged with selling religious goods which were irreligious. If he is, that in itself would be sufficient to constitute libel."

Did the Court mean to tell the jury that it could find against the defendant on the ground that the defendant charged the plaintiff with falsely representing his goods to be Palestine goods? Obviously not, because at another place in the charge the Court stated, as matter of law, that no such false

representations had been made. If, on the other hand, the word deceit was used solely with reference to the religious question, what was the meaning of the following language: "The mere fact of his being charged with selling Korfu citrons *prohibited by the Rabbis* would not in itself and standing alone make it a libel." If the Rabbis, taken as a class, cannot decide the religious question involved, who can?

Again, on page 397, Mr. Justice LEHMAN uses the following language:

"I will say at the outset, that there is nothing in this article, and I state it as a matter of law, that will enable you to interpret it as charging him with the actual false misrepresentations of his goods as Palestine goods. There is nothing in the article that so charges, but what still remains of the claim of the plaintiff is that he was *misleading them by his various acts* to take citrons which were repulsive to the Jewish instinct and prohibited by the Rabbis, in the belief that they were proper citrons for use at the Feast of the Tabernacles and that he did that dishonestly, by dishonest means, and in an attempt to cheat and skin the Jewish public."

If the plaintiff made no false representations that his goods were Palestine goods, we find nothing in the article as the same is limited by the Trial Judge in other parts of his charge which refers to any act of the plaintiff which the defendant condemns. What did the Court mean by the expression: "By his various acts?" What acts did the Court have in mind? The only acts of the plaintiff criticized in the article,—limiting the same as the Court limits it in other parts of the charge,—are the purchase of Greek citrons by the plaintiff and the advertisement and offer for sale of these citrons.

When doctors and, *a fortiori*, Rabbis, disagree, who can decide?

With much diffidence and considerable reluctance because of our ignorance of the Levitical law, the Talmud and the Schulehan Brach, we offer the following suggestions:

First: The plaintiff is the most prominent citron dealer in the United States, and the purchase and sale of citrons has been his business for many years. Prior to the war, he imported citrons both from Palestine and from Greece. His more important purchases had been made of citrons grown in Palestine, but he had bought some Greek citrons because some of his customers preferred them on the ground that they were "nicer" (fol. 458). The plaintiff was on the horns of a dilemma. The war made it impossible for him to get Palestine citrons. He, therefore, had to import Greek citrons or none at all. The situation brought about by the war was a matter of general knowledge. The article describes the situation in regard to citrons, as follows:

"We have not this year received any citrons from Palestine, and with the exception of a few American citron dealers, no one received any citrons this year from Palestine. We need not make any investigation regarding that, because every one knows that from the countries that are at war, no citrons can be procured" (fols. 16, *et seq.*).

Was it better that the Feast of the Tabernacles in 1915 should be celebrated without any attempt to comply with the ancient ritual with respect to the benediction of the three sacred articles described in the Judge's charge, or that Greek citrons should be used? The gravamen of the plaintiff's offense, if there was any offense against Jewish law charged against him, was that he gave to those

Jews who preferred to have Greek citrons rather than no citrons at all an opportunity to purchase the same.

The defendant thought that it was better to have no citrons than to have Greek citrons. It was plainly not libelous for the defendant under the circumstances to call the attention of the Jewish public to the facts, and we contend, with confidence, that it was not libelous for the defendant to express its opinion about the disputed question of Rabbinical law, whether such opinion was correct or incorrect. On such questions, our law encourages the expression of opinion, because it is only by argument which involves the expression of opinion that knowledge can be disseminated. There is an expression in the opening address of the plaintiff's counsel which is very significant in this connection. We quote from the Record, at folio 85, as follows:

"There has never been any prohibition against those citrons and it has been used by everyone without any question, and as a matter of fact were it not *for sentimental reasons* that some prefer Palestine citrons, we will show you that these citrons are of the very best."

The expression "sentimental reasons" is not a happy expression from the plaintiff's standpoint. This expression, we think, illuminates the whole question. We are here dealing with nothing except "sentimental reasons"; and so the result necessarily follows that the readers of the article who would have been sentimentally inclined to adopt the defendant's position with reference to the religious question if the facts had been brought to their attention without any comment by the publisher, would have reached the same conclusion with respect to the plaintiff's course of conduct as they reached after reading the article; and the con-



verse of this proposition is equally true with respect to those Jews who were unaffected by the sentimental reasons which prevented their more strict and orthodox brethren from using Greek citrons where none could be imported from Palestine.

Second suggestion: We are unable to find in the record a scintilla of evidence indicating that the plaintiff's standing, either as a man or a merchant, or his reputation, as distinguished from his goods, was in any way affected by the publication of the article in question. It does not appear that he was thrown out of the synagogue, that he suffered any ecclesiastical punishment, that he lost any friends, that he created any enemies, or that the attitude of his friends towards him was in any way changed by the publication of the article. In fact, no one can read this record without being impressed with the fact that after Mr. Justice Lehman excluded the innuendo printed as paragraph VII of the complaint, this case was tried solely as a libel against goods. We have here, therefore, only another illustration of one of the defects of our jury system.

The plaintiff presented two issues: First, that he had been libeled by the defendant's charging him with palming off on the public Greek citrons for Palestine citrons; and, second, that he had suffered special damage by reason of an unjustifiable attack made by the defendant upon his goods. On the trial he was beaten on both of these contentions, but he obtained a verdict *theoretically* because the Court and the jury found in the article some proof of an attack upon his character which he had not discovered himself, and *really* because the jury paid no attention to the charge of the Court and awarded damages to him based upon the fact that he had not been able to sell all of his 1915 citrons, and that this result had followed the malicious

publication of an article attacking the kind of citrons which the plaintiff was offering for sale, because of his refusal to enter into a business transaction with the defendant which would have enabled the defendant to participate in the profits resulting from the sale of his Greek citrons purchased in the spring or summer of 1915.

Third suggestion: Unfortunately, the history of the world is stained with persecution on account of religious opinions. It is possible, if we go back far enough, to find a time when the slightest variance in the matter of religious belief or ritualistic practice might expose a man, if not to severe punishment, at least to the loss of reputation. But this condition of things has passed away, particularly in this country. In forming our estimate of people, we no longer consider their religious views and practices, so long as they comply with the civil and criminal law. If the plaintiff had lived during the first thirty-three years of the Christian era, possibly his conduct might have been condemned by the Pharisees, but since that time the world, and even the Jewish world, has moved a long distance forward in the direction of religious toleration. Men do not now limit their friends to those who agree with them about religious matters. The Jew is friendly with the Christian, the Protestant is friendly with the Catholic; both are friendly with the Agnostic. The orthodox Jew is friendly with the unorthodox Jew. The High Church Episcopalian is friendly with the Broad Church Episcopalian or the Low Church Episcopalian, and they are all friendly with the Unitarian and the Christian Scientist. There probably never was a time in the history of the world when there was more religious discussion of the most earnest and, at times, of the most savage character, but the attacks are made not against the sinner, but against the

sin; not against the heretic, but against the heresy. It is impossible for us to understand how a person familiar with the literature of the past hundred years can suppose that any man can now be injured in the estimation of his fellow man by any discussion of his religious views, however unorthodox or bizarre such views appear to others to be.

## **POINT II.**

**The judgment appealed from should be reversed and the complaint dismissed with costs to the defendant.**

Respectfully submitted,

MILLER & STEIN,  
Attorneys for  
Defendant-Appellant.

MORGAN J. O'BRIEN,  
Of Counsel.

*To be argued by  
Samuel Seabury*



**Supreme Court**  
**Appellate Division—First Department**

SUNDEL SALAND,  
*Plaintiff-Respondent,*

*against*

HEBREW PUBLISHING COMPANY,  
*Defendant-Appellant.*

***BRIEF OF PLAINTIFF-RESPONDENT.***

This is an action for libel, and was commenced on November 22nd, 1915, by the service of a summons and complaint.

The trial was had in the Trial Term, Part VI, of this Court, Mr. Justice LEHMAN presiding. On March 1st, 1917, the jury returned a verdict for the respondent for \$10,000, and on March 24th, 1917, by stipulation that verdict was reduced to \$6,000.

On April 19th, 1917, the appellant's attorneys served the respondent with a notice of appeal from the judgment entered herein on March 26th, 1917, and from an order of this Court denying the appellant's motion for a new trial.

***Statement.***

The respondent is a merchant. His business consists of importing citrons into this country, and selling them to the Jewish public exclusively for use at the Feast of the Tabernacles (R., fol. 153). He has been engaged in this line of business for the past ten or twelve years (R., fol. 153), and at the time this action was begun he was known as the most prominent Jewish importer of citrons.

The appellant is a corporation organized and existing under the laws of the State of New York and is engaged in the publishing business. Since 1901 the appellant has been in the habit of purchasing, on the advent of the Feast of the Tabernacles, a stock of citrons and of selling them to its patrons (R., fol. 1010). Up to 1913 it imported its stock of citrons itself from Palestine (R., fol. 1011).

The respondent and appellant have had business dealings with each other since 1913 (R., fol. 1012). The former, prior to taking his yearly trips abroad to attend the various citron markets, was accustomed to call upon the appellant's officers to solicit orders for citrons (R., fol. 1016). Upon his return to this country, the appellant would figure out his traveling and other expenses, fix the price of the citrons, deliver the ordered allotment to the appellant and charge it with a 15% commission over and above the price so fixed (R., fol. 1016).

In 1913 the appellant gave the respondent an order for 400 or 500 citrons (R., fol. 1016), in 1914 for 955 (R., fol. 1014) and in 1915 an order for 1200 citrons (R., fol. 1025).

In 1915 the respondent sailed from the Port of

New York, June 18th, for Piraeus, Greece (R., fols. 155-6), which, because of the war, was the only open market for citrons. There he bought 10,000 of the fruit from Greek farmers (R., fol. 260). He then sailed for Alexandria, Egypt, intending to make a further purchase of 5,000 citrons (R., fol. 262). Upon his arrival, however, he found it impossible to realize his purpose, so he cabled to Piraeus for an additional 5,000, paying for the total 15,000 citrons \$9,378.84 (R., fol. 318). Eight days later he returned to Greece (R., fol. 262) and subsequently sailed for New York, arriving there August 26th, 1915.

While in Greece he met Louis Cutler, of New York City, also an importer of citrons, and a business associate of the respondent, who had likewise purchased 5,000 citrons in Greece (R., fol. 274).

The respondent and Cutler entered into an arrangement whereby they agreed to sell their product together at the coming Feast of the Tabernacles (R., fol. 273).

Shortly after their arrival they leased a store at 41 Canal Street and 5 Ludlow Street, New York City (R., fol. 327).

Simultaneously, having learned that a Greek named Kosius, had imported a consignment of 1,000 citrons, they purchased the lot from him for \$850 (R., fols. 354-5).

By this purchase the respondent and the aforementioned Cutler became the only dealers in citrons in this country (R., fols. 203-4).

When sold for ritual purposes to the Jewish public, preparatory to the Feast of the Tabernacles, these citrons, including a set consisting of a palm leaf, a branch of myrtle and one of willow, termed "Lulof" in Yiddish, range from \$2 to \$5 retail apiece (R., fol. 228).

On an average at this yearly feast about 40,000 of these citrons are sold to the Jews in New York and surrounding communities (R., fols. 205-6).

In 1915, the Feast of the Tabernacles began on the night of September 22nd and ended September 28th.

On August 29th, 1915, the respondent called upon David Werbelowsky, secretary of the appellant company. During the interview the respondent informed him of the difficulties he had had in purchasing citrons and how he had been able to purchase only Greek citrons. When asked what prices he was quoting, the respondent answered it would take him a week's time to figure them out (R., fols. 185-8).

On September 5th, 1915, he again called upon Werbelowsky, at the latter's office, this time accompanied by his brother Aaron Saland. Upon this occasion the respondent stated that in view of the scarcity of citrons and the excellent quality of the stock he had bought, the lowest price he could quote was \$3 a set, including a citron, palm, myrtle, willow. Werbelowsky replied that the appellant company would not pay such a price and suggested that the respondent figure out his lowest possible price and then charge a small commission or accept the appellant company as his partner. Werbelowsky declared further that if the respondent refused, the appellant would publish an article which would drive him out of business. The respondent remained obdurate. He, however, offered to guarantee the appellant a \$1,000 profit if it purchased the 1,200 citrons from him, or if it wished it could act as his agent and receive 50 cents for every citron and "lulof" sold. Werbelowsky, the appellant's secretary, refused these offers and reiterated the threat of

issuing an advertisement which would prevent the respondent from doing business that year (R., fols. 188-192).

On September 14th and 15th, 1915, accordingly there appeared in three newspapers published in Yiddish; *i. e.*, "The Jewish Morning Journal," the "Wahrheit," with a circulation of 75,000 and "The Day" with a circulation of 76,235—an article of which the following is a translation:

### CITRONS

#### A DUTY TO PUBLISH.

The Hebrew Publishing Company, who, since former years, have not omitted a single year to supply their faithful customers with the best Palestine citrons at the cheapest prices, find it necessary to acquaint the Jewish public with the following:

We have not this year received any citrons from Palestine, and with the exception of a few American citron dealers, no one (meaning the plaintiff), received any citrons this year, from Palestine.

We need not make any investigation regarding that, because every one knows that from the countries that are at war, no citrons can be procured and just as we could not bring any Hebrew books from Russia and Austria just so we could not bring any citrons from Palestine. And so were left all the honest citron dealers in America, this year without citrons. Energy and financial schemes did not help and naturally—when one has no citron, one does not pronounce any blessing.

We would not have found it necessary to make this explanation were it not for the abominable thing perpetrated by a few (meaning the plaintiff) citron dealers.

Just listen and you will be astonished at what is apt to happen.

As amongst the citron dealers in America



are found a few (meaning the plaintiff) who have every year appealed to the public through announcements in the newspapers that no other citrons should be purchased except Palestine citrons, because thereby assistance is rendered toward the rebuilding of the Holy Land, and support is given to thousands of colonists who derive a living from planting citrons. Now those citron dealers (meaning the plaintiff) have seen that they cannot procure any citrons from Palestine, so they (meaning the plaintiff) travelled over to Korfu, Greece, and bought up a big stock of Korfu citrons.

And just those citrons that come from a land where the ground is saturated with Jewish blood, and which were prohibited by all the sages of Europe, so they (meaning the plaintiff) advertise that they (meaning the plaintiff) have through untiring efforts procured a small number and that it cost them a big price.

Then ask yourself why should these unclean goods cost dear? And why it should require untiring effort to bring to America? They all know apparently, that Korfu citrons are always the cheapest in the market, because not all the citron dealers would buy them and naturally in America, where there are less buyers, it ought to be and is cheaper and besides the two main markets, such as Russia and Austria are closed; then why should they be so dear. Also the importing should not have been so difficult because Greece is not yet involved in war.

The answer is that Korfu citrons cost only a trifle, very little, perhaps ten cents a citron, and there have been enough brought over, to be used as preserves after the holidays. But it was agreed amongst themselves (referring to the plaintiff) that they (referring to plaintiff) should circulate a report that citrons are scarce and very high priced, in order to blind the public and that it should not in-

quire what kind of citrons they were, and to skin the public. We find it necessary to announce in order that the public should not be fooled and that it should not permit itself to be skinned, with Korfu citrons which are unfit for blessing.

All the citron dealers from the whole country should give this information to their customers. All Rabbis, Cantors, Shochtim, Sextons, Presidents of Synagogues, Religious Societies, and all those interested in the religious wants of the people, should acquaint their congregations, and forewarn them not to buy any citrons this year, because it is much better not to pronounce a blessing on any citron than to pronounce a blessing on a Korfu citron, which grows low to the ground and which is soaked in Jewish blood. It is a much higher duty to give the money to be paid for the citron to the relief fund for our unfortunate Jewish brethren and sisters in the war countries that trust so strongly to our help.

It is a much higher duty to give that money to Talmud Torahs and Yeshibeths in Palestine which are in danger of being closed on account of the war (R., fols. 1222-9; Plaintiff's Exhibit 16).

At about the same time (R., fols. 1117-8) the appellant authorized a sign to be affixed to its delivery wagons (R., fols. 1115-8). This sign read as follows:

"No Palestine Esrogim (citrons) this year in America (except a small number, without lulavim (lulofs) received by some individuals by mail).

Benediction on Corfuan Esrogim prohibited.

Such is the decision issued by 20 Rabbis, members of the Union of Rabbis, on the 15th of September, 1915" (R., fol. 1278; Defendant's Ex. 1).

As a result of this libelous publication, in which the integrity and honesty of the respondent was impugned and his business methods declared to be dishonest, and in consequence of this injury to his reputation the record shows that he suffered losses in the following respects:

1. The countermanding of many out of town orders for citrons received by the respondent (see Plaintiff's Ex. 17, 18, 19, 20; R., fols. 231-35, 1229-35).

2. The falling off of both the respondent's retail and wholesale city sales (R., fols. 236-41).

3. The loss incurred by the respondent through being deprived of the opportunity of selling his entire stock of 21,000 citrons or at least so much of them as were of fit quality for ritual purposes, which cost him and Cutler between 60 cents and 80 cents a piece at prices ranging between \$1.75 and \$5.

On September 28th, 1915, the respondent stored 8,300 citrons which remained on his hands, with the Arctic Refrigerating Company at 120 West Street (R., fols. 223-4) in the vain hope that they might last out until the Feast of the Tabernacles in 1916.

During the month of April, 1916, those citrons, upon examination, were found to have rotted and were, thereupon, dumped into the river (R., fols. 224-5).

The appellant admitted that it authorized the publication of the article (R., fols. 1038-40; 1114) and that therein it intended to refer to the respondent (R., fol. 1044) and that it caused the above referred to Defendant's Ex. 1 to be attached to its delivery wagons (R., fols. 1115-18).

Notwithstanding the reflections which the ap-

pellant in the article complained of, made upon the citrons of the respondent, it was established upon the trial (R., fols. 244-5) that the appellant subsequently bought some of these precise citrons and sold them to others for use at the Feast of the Tabernacles.

### POINT I.

**The article upon which this action is based is libelous *per se* in that it imputes dishonesty or want of integrity to the plaintiff in his business and is calculated to injure him in his business.**

The rule is well established that every false and malicious spoken or written publication which reflects upon the plaintiff and his business and his management of it and which tends to injure him in such business, is an actionable libel, without proof of special damages.

*Holmes v. Jones*, 121 N. Y., 461;  
*Fry v. Bennett*, 28 N. Y., 326;  
*Loftus v. Bennett*, 68 App. Div., 128;  
*Hume v. Kusche*, 42 Misc., 414;  
*Smid v. Bernard*, 31 Misc., 31, 39;  
*Davey v. Davey*, 22 Misc., 668.

In the case of *Holmes v. Jones* (*supra*), the court said, at page 467:

“We entertain no doubt that the charge that ‘no consultation was had with General Grant’s family to determine as to the justice of the demand, although such consultation could easily have been had and the injustice of the claim have been made manifest,’ is libellous *per se*. It imputes to the plaintiff dis-

honesty, unfair dealing, injustice in his business, and that such an imputation is libellous *per se*, has never been doubted."

The case of *Davey v. Davey* (*supra*), affirmed unanimously by the Appellate Division in 56 Supp., 1106, is almost on all fours with case at bar.

Mr. Justice McADAM said, at pages 669-70:

"The litigants are brothers. The defendant carried on the grocery and tea business at No. 2295 First avenue, and the plaintiff thereafter opened a similar business at No. 2331 First avenue. The defendant threatened that if the plaintiff opened a rival establishment near the defendant's store he would break up the business of the plaintiff; and after the latter opened the store the defendant caused to be printed and distributed broadcast 5,000 circulars, in which, after eulogistically describing the superiority of his wares and the advantage the public would derive by patronizing him, he said of and concerning the plaintiff and his business methods, 'that an unscrupulous grocer of the same name in the immediate vicinity or neighborhood advertises "Davey's teas and coffees" with a view to deceive the public, and may sell an inferior article.' The words, though cunningly devised and put together, taken in their plain and popular sense, that in which the readers were sure to understand them (*Roberts v. Camden*, 9 East, 96), bear the construction that the plaintiff was an unprincipled grocer (Cent. Dict.); that he was dishonest in his business, for he advertised Davey's teas and coffees with a view to deceive the public, and that he sold inferior articles, this being one of the characteristics of unscrupulous traders. While the defendant had the undoubted right to praise his own wares he had no right to single out the plaintiff, and not only denounce his wares, but in connection therewith impugn his business in-

tegrity. Such a publication could have but one purpose, namely, to injure the plaintiff in his business, and it is, therefore, clearly libellous *per se*. *Fowles v. Bowen*, 30 N. Y., 20; *Moore v. Francis*, 121 id., 199; *Chenery v. Goodrich*, 98 Mass., 224; *Mattice v. Wilcox*, 71 Hun, 485, id.; affirmed 147 N. Y., 624.

Turning now to the article published by the appellant, the words, though cunningly put together, when taken in their plain and popular sense in which the readers were sure to understand them, bear the construction that the respondent was an unprincipled citron trader; that he was dishonest in his business; and that he caused reports to be circulated in order to blind or deceive the Jewish public and was selling citrons grown in Corfu where the ground is saturated with Jewish blood, and were consequently unclean, and was doing this to "skin" the public.

Such imputations were certainly intended to charge and did charge that the respondent was an unscrupulous trader.

The imputation that the respondent is a dishonest citron dealer is the natural and only interpretation of the following extract of the article:

"We (the appellant) have not this year received any citrons from Palestine. \* \* \* And so were left all the honest citron dealers in America, this year without citrons \* \* \*

"We would not have found it necessary to make this explanation were it not for the abominable thing perpetrated by a few citron dealers."

The charge of deceit is to be found in the following extracts:

"Now those citron dealers (those who, unlike the honest citron dealers, had perpetrated

ed an 'Abominable thing') have seen that they cannot procure any citrons from Palestine, so they traveled over to Korfu, Greece, and bought up a big stock of Korfu citrons.

And just those citrons that come from a land where the ground is saturated with Jewish blood and which were prohibited by all the sages of Europe. \* \* \* But it was agreed amongst themselves that they should circulate a report that citrons are scarce and very high priced, in order to blind the public and that it should not inquire what kind of citrons they were, and to skin the public."

Such conduct as that, which in the article itself is denounced as an "abominable thing," is certainly characteristic of only an unprincipled and unscrupulous trader.

To say of a trader that in the conduct of his business he is doing an "abominable thing" is libelous *per se*.

To say that all honest citron dealers were left without citrons and that the respondent had citrons for sale, is to charge that the respondent is a dishonest citron dealer, which is libelous *per se*.

To say of the respondent that what he did in his business was done to "blind the public" is to charge the respondent with deceit in his business.

To say of the respondent that what he did in his business was done "to skin the public" is to charge that the respondent in the conduct of his business was cheating the public and is, therefore, libelous *per se*.

In view of the admission of the appellant that the article complained of was published of and concerning the respondent, the article was a direct charge that the respondent was a dishonest dealer and lacked integrity in his business and was calculated directly and inevitably to injure the respondent in his business.

But in addition to these imputations the appellant's published article charges the respondent with conduct, which in the eyes of the strictly orthodox Jewish readers of the libel, was a charge as grave as the charge of dishonesty and of deceit. It must be understood that a devout Jew holds in most fervent reverence the rules relating to what is and is not "kosher," or clean. He abides by them with rigid obedience during secular days, and upon religious feast days his regard for them is redoubled. It must also be kept in mind that among the Jews, one that is devoutly religious holds the public's esteem and one who is otherwise, is looked at askance. Taking that into consideration, it becomes evident that the appellant's published article tended to have the effect of holding respondent, a Jew, up to the Jewish public's contumely, because of his personal impiety and his disregard for the religious susceptibility of others and to cause both him and his wares to be shunned.

There can be, therefore, no doubt that the article in question is libelous *per se*.

The learned trial court would have been justified in charging the jury as a matter of law that the article complained of was libelous *per se*. Instead of so doing, the Court said in its charge to the jury:

"Gentlemen, if that article were written in English and the words of that article were clear and definite in their meaning, it would then become my duty to tell you this article is libelous or is not libelous. That is ordinarily a question of law for the Court, but where the words of an article are capable of different interpretations, then it becomes the duty of the Court to explain to the jury which possible interpretation would be libelous and leave to the jury the question of whether that



interpretation is one which would reasonably be put upon the article.

For that reason, gentlemen, it will be again necessary for me to examine the article and to point out to you which construction of it would make it libelous and which constructions would not make it libelous.

The plaintiff has said in his complaint that the meaning of the aforesaid article and the charges that the defendant sought to make and did make against the plaintiff are that the plaintiff in collusion with a small number of other citron dealers was misleading the Jewish public and inducing them to buy Korfu citrons which were of no value whatsoever, unclean, repulsive to the Jewish instinct and prohibited by the Rabbis by falsely representing they were Palestine citrons, and that thereby the plaintiff was attempting to cheat and skin the Jewish public.

"Gentlemen, if you think that that article is to be reasonably interpreted in that way, I need not tell you that would constitute a libel on the plaintiff.

I will say at the outset, that there is nothing in this article, and I state it as a matter of law, that will enable you to interpret it as charging him with the actual false misrepresentations of his goods as Palestine goods. There is nothing in the article that so charges, but what still remains of the claim of the plaintiff is that he was misleading them by his various acts to take citrons which were repulsive to the Jewish instinct and prohibited by the Rabbis, in the belief that they were proper citrons for use at the Feast of the Tabernacles and that he did that dishonestly, by dishonest means, and in an attempt to cheat and skin the Jewish public.

If that is found as the reasonable interpretation of the article, then of course even without actual misrepresentation, actual stating that they were Palestine citrons, it would constitute a libel on the plaintiff" (R., fols. 1187-91).

This charge placed before the jury the article and the innuendos alleged in the complaint. No exception was taken to this part of the charge and the verdict of the jury rendered in favor of the respondent conclusively establishes that the innuendos were supported by the defamatory article.

## POINT II.

**Mr. Justice Lehman committed no error in denying the appellant's motion (a) to dismiss the complaint at the opening of the trial, (b) at the close of the whole case, or (c) to set aside the verdict.**

The appellant's brief at page 2 says:

"The exceptions upon which the appellant relies are found at folios 69, 1172 and 1218 of the Record."

These exceptions present the only grounds upon which the appellant seeks the reversal of the judgment appealed from.

There is no contention made in the appellant's brief that the judgment is against the weight of the evidence or that the damages as reduced by the trial Justice are excessive.

This appeal, therefore, attempts to present only the three exceptions referred to above.

The exception taken at folio 69 was to the denial of the appellant's motion to dismiss the complaint made at the opening of the trial.

This motion was practically a demurrer to the complaint. As the complaint obviously states facts sufficient to constitute a cause of action, the motion was properly denied.

The exception taken at folio 1172 was to the denial of the appellant's motion to dismiss the complaint at the close of the whole case.

At the time when this motion was made, all the allegations of the complaint had been proved. The respondent had established by the admission of an officer of the appellant that the appellant published the defamatory article and that it was published of and concerning the respondent.

The appellant had attempted to present the defense of justification.

This attempt on the part of the appellant furnished no reason for dismissing the complaint. It was for the jury to determine whether this defense was established by the proof and the jury properly found that it was not proved.

The exception taken at folio 1218 was to the denial of the appellant's motion to set aside the verdict.

The case was submitted to the jury in a charge to which no exception was taken, except to that part of it which told the jury that it might award punitive damages (R., fol. 1215). The exception taken to that part of the charge (R., fols. 1215-6) is not now urged as ground for reversal and is obviously worthless. The charge of the Court is, therefore, the law of this case, and the appellant cannot be heard to complain as to the manner in which the jury were instructed.

By these three exceptions the appellant seeks to raise the question whether the article is libelous *per se*.

The charge of the Court left this question fairly to the jury, and the appellant, not having excepted to that part of the charge, is in no position now to contend that the article is not libelous *per se*.

*Schweinburg v. Altman*, 145 A. D., 377, 382;

*Gillan v. O'Leary*, 124 A. D., 498, 501.

Assuming for the sake of argument merely that the appellant, in view of its failure to except to the charge, is nevertheless in a position to raise the question whether the article complained of is libelous *per se*, it must in order to prevail upon this appeal, establish that the defamatory article is not susceptible of any reasonable interpretations which would make it libelous *per se*. It is impossible for the appellant to establish this proposition, as we have already shown under Point I of this brief.

The Court left it to the jury to determine whether the article imputed dishonesty to the respondent in his business and charged the jury if it did it was libelous.

Thus the learned trial Justice, after reading the libel and the innuendos set forth in the complaint, and telling the jury that the article complained of could not be complained of as charging the respondent with the actual false misrepresentations of his goods as Palestine goods, charged the jury as follows:

“but what still remains of the claim of the plaintiff is that he was misleading them in his various acts to take citrons which were repulsive to the Jewish instinct and prohibited by the Rabbis, in the belief that they were proper citrons for use at the Feast of the Tabernacles, and that he did that dishonestly, by dishonest means, in an attempt to cheat and skin the Jewish public” (R., fol. 1190).

No exception was taken to this part of the charge. The verdict of the jury established that the article did sustain the innuendos which were put upon it.

The case is thus reduced to very simple terms. This Court will determine from reading the

publication, which was admittedly made by the appellant of and concerning the respondent, whether it is of such a character that a jury might find that it imputed dishonesty to the respondent in his business. If such is its character it is libelous *per se*.

The publication was of such a character that the trial court might well have charged the jury as a matter of law that it was libelous *per se*.

It did not so charge. It left the meaning of the article to the jury, and the jury by their verdict, found that it imputed dishonesty to the respondent in his business.

Under these circumstances, in view of the admission of the appellant that it had published the article of and concerning the respondent, the duty of the jury was to assess the damages which should be awarded to the respondent.

This is all there is to this case.

The appellant's brief indulges in an extended discussion of various questions foreign to the merits of the case, the purpose of which is, as we understand it, to demonstrate that the article is not libelous *per se*. Thus at page 16 the appellant's brief says:

"In the last analysis, therefore, the plaintiff, in order to sustain this judgment, must satisfy the Court that an article charging a Jewish merchant with advertising and offering for sale Greek citrons, accompanied by an expression of the writer's mistaken opinion that such citrons are ritually unclean and, therefore, worthless for religious purposes, is libelous *per se*."

The charge here stated is not at all the charge which was published of and concerning the respondent and upon which the action is based.

The appellant has, after an elaborate analysis, erected an imaginary charge, and then proceeds to demonstrate that this imaginary charge is not libelous *per se*.

Whether it is or not does not concern this case and does not therefore warrant discussion in this place.

The appellant uses a considerable part of the alphabet to indicate the steps by which it concludes that this imaginary or fictitious charge is the charge made in the defamatory article.

The best way to determine whether the article is libelous is to read it as a whole and in connection with the innuendos set forth in paragraph VII of the complaint.

We shall now consider the alphabetical references to the mental processes by which the appellant arrives at the conclusion that the article is not libelous.

A. At page 6 of the appellant's brief it is said:

"The only innuendo contained in the complaint, being the innuendo printed therein as paragraph VII, has been obliterated from the case by the Judge's charge."

The statement therein made is not important, even if true. As a matter of fact, it is not true. The innuendos contained in paragraph VII of the complaint were not "obliterated from the case by the Judge's charge," as the appellant's brief erroneously states.

The Court told the jury that there was nothing in the article which would enable them to interpret it as charging the respondent with the actual false misrepresentation of his goods as Palestine citrons. That part of the charge the appellant's brief is careful to quote at page 7, but it omits to

quote at this place the next sentence of the charge, in which the Court told the jury:

“but what still remains of the claim of the plaintiff is that he was misleading them by his various acts to take citrons which were repulsive to the Jewish instinct and prohibited by the Rabbis, in the belief that they were proper citrons for use at the Feast of the Tabernacles and that he did that dishonestly, by dishonest means, and in an attempt to cheat and skin the Jewish public” (R., fol. 1190).

As we have already pointed out, no exception was taken to this part of the charge, and the verdict of the jury conclusively establishes that this was the meaning which they put upon the article.

The jury by their verdict determined that the article did support the innuendos set forth in paragraph VII of the complaint. In reference to this, it is interesting to read what the appellant says at page 7 of its brief:

“Of course, if the article supported the innuendo printed as paragraph VII of the Complaint, we should not be here contending that it was not libellous *per se*, but the elimination by Mr. Justice Lehman of the innuendo, the position of plaintiff's counsel in his attempt to affirm this judgment, becomes to say the least, very difficult.”

We have already shown that Mr. Justice LEHMAN did not eliminate the innuendos and therefore the admission contained in the paragraph just quoted from the appellant's brief is most significant. It makes it apparent that there ought to be no difficulty in affirming this judgment, and that, upon its own statement, the appellant should not be here contending that it (the article complained of) was not libelous *per se*.

Curiously enough, the appellant in its brief devotes almost three pages to the discussion of the question as to whether the innuendos are supported by the article.

The case of *Morrison v. Smith*, 177 N. Y., 366 is cited and a lengthy extract from the opinion in this case is quoted, which is conceded to be contrary to the position taken by the appellant. This argument of the appellant is only of academic or historical interest, as it is based upon what the appellant believes the law to have been prior to the decision of *Morrison v. Smith*, *supra*. Thus the appellant in his brief says:

“If this case had been tried prior to the decision of the Court of Appeals in *Morrison v. Smith*, decided February 9, 1904, 177 N. Y., 366, it would have been the plain duty of Mr. Justice Lehman to have dismissed the complaint as soon as the Court decided that the only innuendo contained in the complaint was not supported by the article.”

As we have pointed out, the Court did not decide that the *only* innuendo contained in the complaint was not supported by the article. Moreover as the case was not tried prior to the decision in *Morrison v. Smith*, *supra*, the comments of the appellant's brief upon this aspect of the case are wholly irrelevant and need not therefore be further discussed.

As we understand it, the rule in reference to innuendos is now well settled, that where the publication is plainly libelous upon its face, no innuendo is required. *Morrison v. Smith*, *supra*.

Where, therefore, despite the fact that the publication clearly appears upon its face to be libelous and an innuendo is included in the complaint, it should be treated as surplussage and the case



nevertheless submitted to the jury. *Morrison v. Smith, supra*; *West v. The Brooklyn Citizen*, 102 A. D., 480.

If, therefore, we assume, for the purposes of argument merely, that paragraph VII of the complaint contains an innuendo which the libelous article does not support, it was entirely proper for Mr. Justice LEHMAN to treat this innuendo as surplussage and submit the issues to the jury. This was especially so in this case where there were other innuendos set forth in the complaint, as to which the question was presented, whether or not they were supported by the article complained of.

B. At page 9 of the appellant's brief it is stated that "The judgment in this case cannot be affirmed on the ground that the plaintiff proved a libel against his goods."

There is no doubt about the correctness of this position. It is not now, and has never been at any time, urged by the respondent that the judgment should be sustained upon any such ground. This case was not tried upon this theory and the learned trial Justice distinctly so charged the jury (R., fol. 1212).

The judgment sought and recovered in conformity to the instructions of the Court, was for a malicious defamation of the respondent's reputation in his business, not for a libel upon his goods.

C. At page 10 of the appellant's brief it is said that "In considering the question whether the article is libelous *per se*, or not, the Court must disregard the publisher's criticism of the plaintiff's prices."

There is no claim made by the respondent that the criticism of his prices constituted a libel. The trial Justice so charged the jury (R., fol. 1204).

D. At page 11 of the appellant's brief it is said that "In considering the question whether the article is libelous *per se*, or not, the Court must disregard the accusation that the plaintiff made a combination with other dealers to restrict competition."

There is no claim that this charge is made in the article complained of, nor is the claim that the article is libelous predicated upon any such statement.

E. At page 12 of the appellant's brief it is said that "The defendant's motives are immaterial, except as affecting the measure of damages."

We assent entirely to this statement, but it has no bearing upon the questions now under review.

F. At page 12 of the appellant's brief it is said that "This is an action for libel, not an action to punish the defendant for bad trade practice."

The respondent never claimed otherwise, and the Court so instructed the jury (R., fol. 1191).

G. At page 13 of the appellant's brief it is argued that the use of the word "Korfu" instead of the word "Greek" is of no importance in the case; but the respondent has never contended and does not now contend that it is.

H. At page 14 of the appellant's brief it is said that "Condemnatory language, even if intemperate, cannot make an article libelous *per se* if it is apparent from the whole article that the publisher uses the condemnatory language only in connection with definite statements of fact which are not in themselves libelous *per se*."

This contention has no relation to the facts of this case, since here the jury have found that the article as a whole did impute dishonesty to the respondent and the Court charged the jury, without objection on the part of the appellant, that

if they found that such was the meaning of the article, it was libelous.

The balance of the appellant's brief is largely taken up with a long quotation from the charge of the Court and an attempt to make it appear that there were complicated questions of Rabbinical Law and a question as to what constituted uncleanness, from a ritual standpoint.

No such questions were involved in the case.

The appellant endeavored to inject them into the case in its attempt to prove justification. The attempt utterly and completely failed, but they are now sought to be availed of to impress this Court with the idea that the case was involved and complicated and not properly understood by the jury.

There is no confusion as to the issues, except that which the appellant injected into it as a substitute for a defense.

Thus, after devoting several pages of its brief in quoting from the charge of the Court and giving this Court the benefit of its commentary thereon, the appellant bewilderingly asks:

"If the Rabbis, taken as a class, cannot decide the religious question involved, who can?" (p. 21).

There is no religious question involved, although the appellant, by the publication of this libel, did try to injure the respondent's reputation by appealing to the religious beliefs and sensibilities of those among whom the respondent carried on his business.

The only confusion in the case arose from the appellant's attempt to prove as a part of its defense of justification that the use of the respondent's citrons had been prohibited by the Rabbis.

This testimony was contradicted by witnesses called on behalf of the respondent.

There was no religious question to decide, and the jury did not attempt to decide such a question.

The jury did decide that the appellant failed to establish justification.

The extended commentary upon this part of the charge of the Court in the appellant's brief serves no useful purpose. If this part of the Court's charge was incorrect or not sufficiently clear, the appellant should have excepted to it or asked for further instructions.

It did neither. It was entirely satisfied with the charge, which was more favorable to it than the charge to which it was entitled, until the jury found against it. But now, in the effort to secure a reversal of the judgment, it indulges in an extended criticism of the charge.

The appellant completely failed to establish its defense of justification.

Notwithstanding the cunning attempts of the officers of the appellant to evade responsibility for the publication of this very gross defamation of the respondent, it was conclusively established upon the trial that its defense of justification was destitute of any merit, and the jury so found.

The fact is that the libel was the fruit of actual malevolence on the part of the appellant toward the respondent. The appellant had been in the business of selling citrons for about eighteen years. It had repeatedly dealt with this respondent in this business, often buying Greek as well as Palestine citrons. In 1915 it endeavored to drive a bargain with the respondent in reference to the particular citrons referred to in the defamatory article, which bargain the respondent refused to assent to because he regarded it as unfair.

It was then that the appellant, which was willing to join with the respondent in the selling of these precise citrons, was for the first time overcome by conscientious scruples which impelled it to print the defamatory article under the title "Duty to Publish."

Notwithstanding these conscientious scruples set forth in the defamatory article, it is clearly shown in the record that this appellant itself bought and sold to others some of these particular shipments of citrons which it sold for use at the Feast of the Tabernacles (R., fols. 244-5).

### **CONCLUSION.**

***The judgment and order appealed from should be affirmed, with costs.***

Respectfully submitted,

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[442]

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